

writing over a word in a solemn sentence of the Court. It is important for us to see that the sentences and all the procedure is properly carried out under the Summary Procedure Act, because the appeal is limited to so very narrow grounds. The offer to prove that the alteration was made before the sentence was signed or read over to the accused is quite inadmissible. We cannot allow a sentence which is vitiated *in essentialibus* to be set up by parole proof.

LORD NEAVES concurred, and the Court sustained the appeal in respect of the vitiation, and awarded £4, 4s. of expenses.

Agent for Appellant—W. B. Glen, S.S.C.

Agent for Respondents—Maclachlan & Rodger, W.S.

## COURT OF SESSION.

Thursday, July 20.

### FIRST DIVISION.

THE LORD ADVOCATE *v.* HUNT.

(*Vide* 3 Macph. 426, and *ante* vol. iii, p. 223.)

*Crown Property—Dunfermline Palace.* Application of the judgment of the House of Lords, on the report of Mr R. B. Rankin, W.S., settling the bounds of the ground in respect of which the Crown was entitled to decree, namely, the ground whereon the said palace or the ruins thereof is situated, and the ground necessary for full and unlimited access to it from the Mill Hough Road, and from Monastery Street and St Catherine's Wynd.

The House of Lords in this case having pronounced a judgment (*vide ante*, iii, 223) recalling the interlocutor of the Court of Session, and finding in terms of the alternative conclusion of the summons, and having remitted the cause to the Court of Session "to do therein as shall be just and consistent with these declarations and this judgment, with power to the Court to settle the bounds of the ground in respect of which the pursuer (the Crown) is hereby entitled to a decree," their Lordships, on the motion of the pursuer to apply the judgment, remitted to Mr Robert Burt Rankin, W.S., in the following terms:—"To inspect the subjects described in the summons and delineated on Mr Wylie's plan, No. 69 of process, a copy of which is signed by counsel for both parties as relative hereto, and agreed by them to be held as correct and equivalent to the original, and to report with reference thereto,—*First*, The bounds of the ground described in the judgment of the House of Lords, as follows:—"The Royal Palace of Dunfermline, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, lying between the walk or road on the south of said ruins, running down to the Hough Mills on the one side, and Monastery Street and St Catherine's Wynd of Dunfermline, or king's highway, on the other side, including such ground in the vicinity of the ruins of the said royal palace as is needful to give full and unlimited access from the said street and wynd and king's highway to the said ruins, and around the same,"—distinguishing the ground needful for such access from the other ground embraced in the above description; and, *Second*, The bounds of the pieces of

ground alleged by the defender to be held by him under special titles not affected by the said judgment, and to be included, or partly included, in the ground coloured green on said plan; and authorise the Reporter, if he finds it necessary, to take the assistance of Mr Wylie, civil engineer, or, in his absence, any other engineer or surveyor whom the Reporter may select in carrying out this remit."

In obedience to this remit Mr Rankin reported:—"1. Your Lordships have directed the Reporter, in the first place, to report the bounds of the grounds described in the judgment of the House of Lords as follows:—"The Royal Palace of Dunfermline, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, lying between the walk or road on the south of said ruins, running down to the Hough Mills on the one side, and Monastery Street and St Catherine's Wynd of Dunfermline, or king's highway, on the other side, including such ground in the vicinity of the ruins of the said royal palace as is needful to give full and unlimited access from the said street and wynd and king's highway to the said ruins, and around the same;" and your Lordships have directed that the report as to the bounds of the ground so described be made with reference to Mr Wylie's plan, No. 69 of process, and that it should distinguish also, with reference thereto, the ground needful for access from the other ground embraced in the above description.

"This description is indetical in terms with the description contained in the alternative conclusion in the summons, beginning with the words, 'at all events,' &c. Mr Wylie, to whom, of this date (June 21, 1862), Lord Mackenzie, Ordinary, remitted to define the boundaries of the ground so far as claimed under this conclusion, and whom he allowed the parties to examine as a witness in reference to the plan prepared by him, explained in his examination that the description, 'taken by itself, is defective, and it is not possible to lay down on the plan the ground claimed, unless that description is taken in connection with the description in the immediately previous part of the summons.'

"The description, taken by itself, merely supplies two lines of road running nearly parallel to each other on the north and south, between which the subjects are said to be situated, and gives no boundaries on the east and west connecting these roads. Nor, strictly speaking, are the subjects specified as bounded by the roads, or, in other words, as extending to them on the sides on which they respectively run; and so the specification of the subjects, in the judgment of the House of Lords, is merely descriptive, and not fixed with reference to precise boundaries on any side.

"Mr Wylie, as he explained in the course of his further examination as a witness, imported into this descriptive specification the boundaries, so far as applicable thereto, contained in the description of the larger area of ground claimed under the prior conclusion of the summons—the result of reading the two descriptions together being shown by the space on the plan coloured dark green; and he reported to the Lord Ordinary that this represented the ground claimed under the alternative conclusion—to which the Crown thereafter restricted its claim.

"The Lord Ordinary found that the Crown was entitled to the ground thus coloured dark green on the plan.

"The Crown itself, however, seems to have admitted, in the discussions in the Inner-House and House of Lords, that the space coloured green appears to have included 'the garden and grounds of the Constabulary and Bailie Houses' on the north-west or west (to which the Reporter will afterwards advert more at length), and 'perhaps another small corner next the Heugh Mills' on the south-east or east; or, in other words, that the space included more than properly falls under the description in the alternative conclusion, as the defender contended that it does, in any view of the case. And though the attention of the House of Lords appears to have been called specially in the cases for both parties to this point, and to the terms of the Lord Ordinary's interlocutor, and representations were made on behalf of the Crown before the judgment was framed, with the view of obtaining a distinct affirmance in express terms of that interlocutor, fixing the extent and boundaries of the subjects by reference to the space coloured green, the judgment was not so framed; but a judgment was pronounced in terms repeating the description in the alternative conclusion of the summons, and the cause was remitted back to the Court, with power to settle the bounds of the grounds. . . .

"The Reporter would perhaps not have thought it necessary to direct attention specially to this matter, but for the fact that the Crown now claims, under the judgment of the House of Lords, the whole area coloured dark green on the plan. . . . An inspection of the ground leaves no practical doubt that the two roads must be regarded as the boundaries of the subjects described in the House of Lords judgment on the sides on which they run, at least through a certain portion of their length.

"The old road leading to the Heugh Mills is evidently the true boundary of the subjects on the south, separating them from the ground acquired by Mr Arthur Forbes of Pittencrieff from Lord Tweeddale in the excambion of 1730, to be afterwards referred to, of which in the titles it is described as one of the boundaries. . . .

"There is practically as little doubt as to what was the boundary of the palace on the side of Monastery Street and St Catherine's Wynd, or king's highway, to which it looked in front. There is no part of the front wall of the palace visible. . . .

But whatever was the plan or character of the palace frontage, there must have been, in all probability, a space in front of the palace occupied by the court or entrance yard, extending up to the highway, and probably enclosed by a wall on the same site as that now standing; and the Reporter is therefore humbly of opinion that the highway must be taken to be the boundary of the palace and grounds thereof on the north.

"If the suggestion of the Reporter be adopted as to what may be called the front and back boundaries of the palace, some way has been made towards the approximate ascertainment at least of what may be called the side boundaries. The precise ascertainment of the boundary on the west side, however, seems at this distance of time to be impossible.

"On the east side the wall now standing appears to the Reporter, from the inspection which he has made of the subjects, to have been the boundary of the palace, making allowance for the projections of earth at the base of the wall; and this is confirmed by its being described in the titles as the

western boundary of the Heugh Mill subjects, to be afterwards adverted to. It may be added that it is also confirmed by Slezer's second sketch.

"With regard to the Queen's House, or Queen Anne's Dowry House, the Reporter has some doubt whether it falls within the present action as now restricted.

"If your Lordships shall be of opinion that it is so, the western boundary of the palace is shown by the red line C D F G, which Mr Peddie has marked on Mr Wylie's plan at the sight of the Reporter; but if not, then the western boundary is shown on the plan by the line C D E.

"With regard to that part of the remit under which the Reporter is directed to include such ground in the vicinity of the ruins as is needful to give full and unlimited access from Monastery Street and St Catherine's Wynd to the said ruins, and around the same, Mr Peddie has marked, at the sight of the Reporter, the space necessary to give such access upon all sides of the ruins by the dotted red lines on the plan, which distinguish it from the ground on which the palace and ruins thereof are situated, and include a space necessary for access to the ruins of the Queen's House, in case that may be held to be within the action.

"The space marked as necessary for access interferes, as will be afterwards shown, not only with portions of the ground coloured dark green on the plan, which appear to be held by the defender under special titles, but also with the old mill road before referred to, which is outwith the space coloured green; and it is for the Court to say whether in this state of matters the Crown is entitled, under the judgment of the House of Lords, to the access referred to, so far as that involves the appropriation of ground beyond the boundaries of the palace and ruins thereof. The extent allowed for access at the sides is only 30 feet wide, and, considering the precipitous nature of the ground, it appears to be the minimum extent to which it is practicable to restrict the access. If the Crown is found entitled to this, it will be necessary, in consequence of the steepness of the gradients, to form stairs or steps on both sides of the palace, as ordinary footpaths would require to be formed with considerable detours, for which there is no room in the spaces allotted by the Reporter.

"With regard to the road, it may be mentioned that there appears to have been formerly no entrance or access to the place from the back, so far at least as can be now ascertained; and it is for the Court to decide whether the Crown is entitled, under the judgment of the House of Lords, to an access round the back of the palace on the outside. The road undoubtedly forms the only available access round the back of the palace, and it is from this that the finest view of the ruins is obtained. It is only 6 feet wide, and the whole breadth of it is therefore necessary for access. No ground can apparently be gained by clearing away any of the projections of earth or rock which jut out from the basement of the palace wall at intervals along the road, as any interference with these would probably endanger the stability of the ruins.

"The result upon this point regarding the road appears to be that, while the whole breadth of it along a certain part of its length, as marked by Mr Peddie, is absolutely necessary for access around the ruins of the palace, it is not included within the ground claimed by the Crown under the conclusions of the summons as restricted, and it might perhaps be held to be within the subjects of which

the defender is in right under his title to the Heugh Mills, and the possession which has followed thereon.

"On the whole matter, if your Lordships approve of the foregoing report, and are of opinion that the Crown is entitled to access round the south side or back of the palace, your Lordships may be pleased to pronounce an interlocutor finding and declaring that the bounds of the ground to which the pursuers are entitled, by virtue of the judgment of the House of Lords, are those marked by Mr Peddie on the copy of the plan, No. 69 of process, with the letters H K L M N G, or with the letters H K L M E, according as your Lordships may determine that the ruins of the Queen's House are within the present action, and form part of the royal palace to which the Crown is entitled, or the contrary; and that the pursuer is entitled to free and unlimited access from Monastery Street and St Catherine's Wynd to the said ground at all points along the frontage thereof, and remit to Mr Peddie to stake off the boundaries on the ground or place march stones along the same."

To this report the Solicitor-General (CLARK) and T. Ivory, for the pursuers, objected, in so far as the Reporter had not reported that the whole of the ground represented by the area coloured dark green on the plan, No. 69 of process, is within the bounds of the ground described in the judgment of the House of Lords as follows:—"The royal palace of Dunfermline, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, lying between the walk or road on the south of said ruins running down to the Heugh Mills on the one side, and Monastery Street, and St Catherine's Wynd of Dunfermline, or king's highway, on the other side, including such ground in the vicinity of the ruins of the said royal palace as is needful to give full and unlimited access from the said street and wynd and king's highway to the said ruins and around the same."

LEE, for the defender, also objected—(*Primo*), That some of the subjects included or referred to in the report were beyond the bounds of the ground described in the judgment of the House of Lords, and therefore beyond the terms of the remit; more particularly—(1) The subjects referred to as the Queen's House are not within the description; (2) the walk or road on the south of the ruins running down to the Heugh Mills is beyond the bounds of the ground described; (3) the waste ground and walls between Monastery Street and the ground coloured green on the plan, No. 69 of process, at the place marked by Mr Wylie "Site of Queen's House," are not within the bounds so described. (*Secundo*), That the subjects above mentioned were within the special titles of the defender to which the Reporter referred, and were not affected by the judgment of the House of Lords. (*Tertio*), The bounds of the ground described in the judgment of the House of Lords, instead of being marked by march stones as proposed by the Reporter, ought to be properly fenced off at the expense of the Crown, in such way and manner as may be settled by the Court.

At advising—

LORD DEAS—In this case the only question remaining for decision is as to the boundaries of the ground upon which the palace of Dunfermline stands, and "the ground adjacent thereto." At an early stage of the case, by a minute No. 119 of process, the Crown restricted their claim to the

ground coloured dark green in Mr Wylie's plan, and described in the alternative conclusion of the summons. The question between the Crown and Mr Hunt originally was, whether the palace of Dunfermline had become part of his barony. Of course in such cases the Crown requires to show no title; it is for the other side to instruct theirs. Mr Hunt maintained that his title was contained in certain conveyances. Those conveyances, as it turned out, conveyed to him ground between his own property and the palace, but bounded by the palace. It was decided therefore that the palace, though held by Mr Hunt and his predecessors, could not have been held by them as part and parcel of their barony, and was not specially conveyed to them. The House of Lords having found that the palace did not belong to Mr Hunt, but to the Crown, pronounced an interlocutor to that effect, whereby it is declared that the pursuer (that is, the Crown) is entitled to a decret in terms of the summons, so far as relates to the ground in the said interlocutor described as follows:—"That is to say, the royal palace of Dunfermline, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, lying between the walk or road on the south of said ruins, running down to the Heugh Mills on the one side, and Monastery Street and St Catherine's Wynd of Dunfermline, or king's highway, on the other side, including such ground in the vicinity of the ruins of the said royal palace as is needful to give full and unlimited access from the said street and wynd and king's highway to the said ruins, and around the same. And it is also ordained that the cause be remitted back to the Court of Session in Scotland, to do therein as shall be just and consistent with these declarations and this judgment, with power to the Court to settle the bounds of the ground in respect of which the pursuer is hereby entitled to a decret."

It is for this Court therefore to apply the judgment of the House of Lords. Now, it is quite plain that as to the north and south boundaries, all that it is necessary to ascertain is where Monastery Street and St Catherine's Wynd on the one side, and the walk running down to the Heugh Mills on the other, ran. On this matter, under the remit to him, Mr Rankin has reported, and there is no dispute as to his accuracy. He has also reported that the ground necessary for access is the ground marked by the dotted red lines on Mr Wylie's plan. With reference to the question whether or not the "Queen's House" is included in the palace, the Reporter has left it to the Court to decide, but has caused an alternative marking to be made on the plan of the ground necessary for access, in case it should be included by the Court. In the note of objections for the Crown, it is objected that Mr Rankin has not reported the Crown entitled to the whole of the ground coloured dark green upon the plan. No objection is raised as to the Queen's House. If it is not within the area coloured green, then it is not within the area claimed by the Crown under the minute of restriction. On the face of the plan it is not so included, and so we have no need to inquire whether it is or was a part of the palace. It is not now within the claim of the Crown, and that is all we have to do with it.

As to whether the Crown is to have all the ground coloured green in the plan, as claimed, I have no doubt that it is an open question. The interlocutor of the Lord Ordinary, which went on the supposition that the Crown was entitled to the

whole ground coloured green, as necessary for access, &c., was recalled, and the interlocutor pronounced by this Court rendered it quite unnecessary to inquire into that question. It was only when the House of Lords pronounced the judgment which we are now applying that the question of boundaries arose. What the House of Lords found was that the Crown was entitled to the palace, or ruins thereof, or ground whereon the same is situated, and immediately adjacent thereto, and that is to include such ground as is requisite for full and unlimited access to the ruins from two particular roads or streets. That finding necessarily implies that the Crown has right to those two roads, to the use of one of which, at any rate, Mr Hunt, on his side, objects in his second objection. In this he is clearly wrong. The only question therefore that remains is as to the east and west boundaries. I think it exceedingly probable that the ground reported by Mr Rankin did belong to the Crown, and Mr Hunt has failed by his special titles to prove the reverse. The probability is that the Crown had right to a great deal more. But although it has been found that neither Mr Hunt's barony or special title include the palace, still there are now no means of ascertaining what they did include, and what was reserved to the Crown. The Crown has neglected its right so long that it is now quite an arbitrary thing to decide where the boundary is. This sufficiently accounts for the House of Lords giving no particular ground to the Crown, but only that necessary for access. That being the case, the question is, whether the ground given by the Reporter, as means of access, is sufficient to satisfy the judgment of the House of Lords. On that matter I am humbly of opinion that the report ought to be approved of.

The other Judges concurred.

The Court therefore approved the said report, and remitted farther to Mr Rankin to see it carried into execution by the erection of march walls, &c., with the assistance of Mr Peddie, C.E.

Agent for the Crown—D. Beith, W.S.

Agents for Mr Hunt—Maitland & Lyon, W.S.

Thursday, July 20.

ANDERSON *v.* FENTON AND OTHERS.  
GRANT AND OTHERS *v.* FENTON AND  
OTHERS.

*Public—Body of Subscribers—Committee—Secretary.*

Circumstances in which it was found that a committee, styled "The Forfar Games Committee," were the representatives of the subscribers to the public games only, and not of the general public; and in which it was held that the secretary of such committee was responsible to those who appointed him, no matter who their constituents were; and that on their dismissing him he had no right to raise the question, whether they continued to be that which they represented themselves, or had been superseded by another committee.

These were two appeals against the interlocutors of the Sheriff of Forfarshire, pronounced in two actions before him, arising out of the same circumstances, one of which was at the instance of Andrew Lawson Fenton and others, the "Forfar Games Committee," petitioners, against John

Charles Anderson, their secretary; and the other was an action of multiplepointing at the instance of James Grant and others, calling themselves "The Committee of Management of the Forfar Games," real raisers, against the said Andrew Lawson Fenton and Others, the "Forfar Games Committee," seeking to obtain payment of the balance of the funds in the hands of the said Forfar Games Committee, and deposited in the Bank of Scotland at Forfar.

It appeared from the condescence and proof that the Forfar Games, which had been discontinued for some years, were resuscitated in 1865, and held at Forfar from 1865 to 1868, under the auspices of a committee known as "The Forfar Games Committee," and which was composed of gentlemen who had collected subscriptions for the purpose, and of some others whom they had called in to their assistance. In 1865, 66, and 67, this committee held public meetings in Forfar previous to the games, with a view of popularising them, but were not responsible to or controlled by the public in any manner. The committee during these years, of their own accord, added to their number on several occasions persons whom they thought would be useful to them. Amongst others they took in Mr Anderson, the appellant in the first action, and made him their secretary in 1868. The duties of his office were to keep books and papers belonging to the committee, conduct the correspondence, and generally see that all the directions and resolutions of the committee were given effect to. All said books and papers were accordingly given into his charge, with the exception of those in the hands of the treasurer. In the latter end of 1868 Mr Anderson began to neglect his duties as secretary of the committee, and on 9th June 1869 he ceased to carry out their instructions altogether, and refused to give obedience to them. Accordingly, on 13th July of that year, at a meeting of committee, he was denuded of his office, and Mr Andrew Lawson Fenton, one of the committee, was appointed secretary in his room, with instructions to call upon the appellant to deliver up to him all books and papers in his possession belonging to the committee. With this the appellant refused to comply, and accordingly the summary petition, mentioned above as the first of the two conjoined actions, was brought by the committee to obtain delivery of the said books and papers.

In the course of the early part of 1868 some persons having become dissatisfied with the conduct of the games by the committee, began to agitate for a change in the management. With these the appellant allied himself. These persons, the majority of whom were not subscribers, upon the footing that "The Forfar Games Committee" were responsible to the public, having formed themselves into an interim board of management, called a public meeting of the inhabitants of Forfar, and obtained themselves appointed "a Committee of management of the Forfar Games" with a view to superseding the old committee. Having so obtained themselves appointed a committee of management, they raised the second action—that of multiplepointing in the hands of the Bank of Scotland—against the old committee, alleging a sum of £75, the balance in the hands of the old committee from the previous year's games, as the fund *in medio*.

A record was made up in both actions, and proof led, which turned very much upon the accuracy of the minutes of meeting produced by the appellant