

vided by the Summary Jurisdiction Acts in force in either country according as the trial takes place in the one or the other. Reading the clause therefore upon the ordinary principle of construction, *applicando singula singulis*, it appears to me that trials in England and Scotland are to be conducted according to the procedure prescribed by the Acts in force in each of these countries respectively. Now, it appears that there is a clause in the English Summary Jurisdiction Act which confers a right to trial on indictment if it is demanded. But it is admitted that no such right is given by any Summary Procedure Act in Scotland. All that the Merchandise Marks Act says is that the magistrate is to inform the accused of his right. The record in this case states that the Sheriff informed the accused of his right to be tried on indictment, but we are not told what specific information the Sheriff gave him on the subject. But whatever be the true meaning of section 2 (6) of the Merchandise Marks Act, it does not affect the question whether this indictment was competent in the Sheriff Court, and I agree with your Lordships that it was not, and that on that ground alone the decision must be upheld.

The Court refused the bill.

Counsel for the Complainers—Ure, K.C. —Tait. Agent—Geo. Arnott Eadie, S.S.C.

Counsel for the Respondent—Campbell, K.C. —Hossell Henderson. Agents—Dalgleish & Dobbie, W.S.

Counsel for the Crown—M'Clure, A.-D. Agent—W. J. Dundas, Crown Agent.

COURT OF SESSION.

Thursday, December 22.

FIRST DIVISION.

[Lord Low, Ordinary.

COLQUHOUN v. SOCIETY OF CONTRIBUTORS TO WIDOWS' FUND OF FACULTY OF PROCURATORS IN GLASGOW.

Insurance—Widows' Fund—Contributors to Widows' Fund Limited to Members of a Society—Expulsion of Member of Society—Right to Contribute to and Participate in Funds—Glasgow Faculty of Procurators Widows' Fund Act 1833 (3 Will. IV, c. lxxiv)—Glasgow Faculty of Procurators Widows' Fund Act 1875 (38 Vict. c. vi), sec. 3.

Held (diss. Lord M'Laren), on a construction of the Glasgow Faculty of Procurators Widows' Fund Acts 1833 and 1875, (1) that it was a condition of a person being entitled to contribute to the Widows' Fund of the Glasgow Faculty of Procurators that he should continue to be at the time a member of the Faculty of Procurators in Glasgow, and therefore

(2) that when the name of a member of the Faculty of Procurators was struck off the roll of the Faculty he had no longer a right to contribute to the Widows' Fund, and that at his death his widow and children would not be entitled to the benefit of the fund.

The Glasgow Faculty of Procurators Widows' Fund Act 1875 (38 Vict. cap. vi) in the preamble sets forth, *inter alia*, as follows:—“Whereas it is expedient that the provisions of the Act of 1833, which require persons becoming members of the Faculty to become members of the Society and contributors to the fund, should be repealed, and that from and after the commencement of this Act no person should be obliged or entitled to become a member of the Society or a contributor to the fund, and that no person other than the widows and children of deceased contributors, and such persons as shall at the commencement of this Act be contributors and their widows and children, should have any interest in the fund.” . . . Section 3—“From and after the commencement of this Act all the provisions of the Act of 1833 by which persons becoming members of the Faculty are required to become members of the Society and contributors to the fund, and to pay any sums to the treasurer of the fund, shall be and are hereby repealed, and from and after the said date no person shall be obliged or be entitled to become a member of the Society or a contributor to the fund; and no person other than the widows and children of the deceased contributors who shall not have renounced or forfeited their interest in the fund under the provisions of the Act of 1833, and the persons who shall then be contributors and shall not have renounced or forfeited their interest as aforesaid, and their widows and children, shall have any interest in the fund.”

On January 22nd 1904 James Colquhoun and his wife and children brought this action against the Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow. and David Murray, LL.D., writer, 169 West George Street, and others, the trustees of the said Society, concluding for (1) reduction of a minute or resolution of the said Society, dated 4th February 1901, whereby it was resolved that James Colquhoun had ceased to be a contributor to the Widows' Fund or to have any interest therein, and whereby it was also resolved that his name should be struck off the list of contributors; and (2) declarator that notwithstanding the passing of said minute or resolution James Colquhoun was at the date thereof, and still is, a contributor to the said Widows' Fund, and entitled to all the rights, privileges, and benefits of a contributor, and that the other pursuers were, notwithstanding the said resolution, still entitled to all the rights, privileges, and benefits of the widow and children of a contributor to said Widows' Fund.

The Faculty of Procurators in Glasgow was erected into a corporation and body politic by royal charter dated 6th June 1796, and they obtained a supplementary charter

dated 20th August 1897. By the royal charter of 1796 the members of the Faculty were granted the exclusive privilege of practising as law-agents before the Sheriff Courts in Glasgow.

Prior to 1833 the Faculty gave aid to, and under a scheme which it had established granted annuities from its funds to, widows and children of members of Faculty. On 10th June 1833 an Act of Parliament was passed for the more effectual management of the fund, and it was declared by that Act that all and each of the members of the Faculty of Procurators in Glasgow, who were members of or contributors to said fund, and all and every other person or persons who should thereafter become members of or contributors to said fund in manner thereafter mentioned, should be, and they were thereby declared to be, members of and contributors to the fund established under the provisions of the said Act, and should be called 'The Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow,' which Society was incorporated by said Act.

Only members of the Faculty of Procurators could be admitted members of the said Widows' Fund Society, and all who became members of the Faculty and who were under fifty years of age were obliged to become members of and contributors to the said Society.

By the Law Agents Act 1874 the exclusive privileges previously exercised and enjoyed by the Faculty were abolished.

In 1875 an Act intituled "The Glasgow Faculty of Procurators' Widows Funds Act 1875" was passed, of which the preamble and section 3 provided as quoted *supra*.

James Colquhoun became a member of the Faculty and a contributor to the Widows' Fund on 28th February 1870. He duly paid the entry-money to the Widows' Fund, amounting to £65, on joining the Faculty, and his marriage-tax, amounting to £12, 10s., on the occasion of his marriage on 6th October 1881, and his half-yearly contributions of £1, 15s. each from the year 1870 till Candlemas 1899.

On 4th October 1899, before the High Court of Justiciary, James Colquhoun pleaded guilty to a charge of embezzlement and was sentenced to five years' penal servitude.

On 2nd March 1900, at a meeting of the Faculty of Procurators, the Faculty, in respect of his conviction and sentence, struck James Colquhoun's name off the roll of the Faculty. Thereafter his name was struck off the rolls of Law Agents and Notaries Public of the Court of Session on the application of the Faculty of Procurators.

By the supplementary charter of 20th August 1897 it was provided (section 3) that the Faculty should have power to remove any member's name from the roll. The pursuer averred that under the original charter of 6th June 1796 the Faculty had no power to remove any member for unprofessional conduct. The defenders averred that the Faculty had, prior to the date of the supplementary charter, exercised a

power of removing any member from the roll for unprofessional conduct.

In July 1903 James Colquhoun wrote to the treasurer of the Widows' Fund inquiring the amount of arrears of contributions then due, and stating that he was prepared to pay the amount of arrears and interest. In reply to that letter Mr Arthur Forbes, the treasurer of the Widows' Fund Society, wrote to James Colquhoun stating that at a meeting of the Widows' Fund Society held on 4th February 1901 he had been instructed to decline to accept payment of any contributions tendered by him, and to strike his name off the list of contributors.

The pursuers averred further (Cond. 14)—"The said resolution of 4th February 1901 was *ultra vires* of the Society. From the date of the Act of 1875 the defenders' Society was really an annuity or insurance company in liquidation, and no action on the part of the Faculty of Procurators, which, after the passing of the Law Agents' Act of 1874, and more particularly after obtaining the supplementary charter of 20th August 1897, had ceased to have any real connection with the Widows' Fund Society, could entitle the said Society to remove a contributor from the roll on the plea that he was no longer a member of Faculty, the Faculty being to the extent of three-fourths of its membership, composed of persons who were not contributors to the fund administered by the defenders' Society."

The pursuers pleaded, *inter alia*—" (3) The pursuers are entitled to declarator as concluded for, in respect that the said James Colquhoun has not incurred forfeiture of his interests in the defenders' Society, and is still legally a contributor thereto."

The defenders pleaded, *inter alia*—" (1) No title to sue. (3) The only persons entitled to receive benefit from the funds of the said Society being the widows and children of members of the said Faculty of Procurators, and the said James Colquhoun being no longer a member of the said Faculty, and it not being possible for the other pursuers ever to be the widow and children of a member of said Faculty, the pursuers have no interest in the said Society or the funds thereof."

On 25th June 1904 the Lord Ordinary (Low) pronounced an interlocutor dismissing the action and finding the pursuers liable in expenses.

Opinion.—"I think that under the Widows' Fund Act of 1833 it is plain—(1) That no one could be a contributor to the Widows' Fund unless he was a member of the Faculty of Procurators of Glasgow; and (2) that no persons were entitled to the benefit of the fund except the widow or children of a contributor. When the name of the pursuer James Colquhoun was struck off the roll of the Faculty he lost the necessary qualification of a contributor, and had no longer a right to contribute to the fund, and therefore at his death his widow and children will, if their rights are to be determined by the Act of 1833, not be among the class of persons who alone are entitled to the benefit of the fund.

“It was argued, however, that the position of matters was materially changed by the amending Act which was passed in 1875, and that the effect of that Act was to secure the benefit of the fund to the widow or children of all persons who at the passing of the Act were contributors.

“That argument was founded chiefly upon the provisions of the 3rd section of the Act of 1875. The reason why that Act was passed was that certain exclusive privileges of the Faculty of Procurators had been taken away by Act of Parliament, and it was therefore considered to be expedient to repeal the provision of the Act of 1833 that all persons becoming members of the Faculty should be contributors to the Widows' Fund. The 3rd section therefore repealed that provision, and enacted that after the date of the Act no person should ‘be obliged or entitled to be’ a contributor to the fund, and that ‘no person other than the widows and children of then deceased contributors . . . and the persons who shall then be contributors . . . shall have any interest in the fund.’

“It seems to me that enactment does not support the pursuers' contention. What the section provided was that no person who was not a contributor at the passing of the Act should have an interest in the fund, but it did not provide that every person who was then a contributor should have an interest in the fund.

“It therefore seems to me that the Act of 1875 does not alter the condition that, unless a person is at the time of his death a contributor to the fund, his widow and children have no claim to participate in the profits thereof.

“I am accordingly of opinion that the pursuers are not entitled to decree.”

The pursuers reclaimed, and argued—It was enough that a person should be a member of the Faculty of Procurators at the date when he became a contributor to the Widows' Fund; it was not an essential condition that he should continue to be a member. The defenders had not pointed out any clause in the Acts of Parliament or the charter imposing that condition. The effect of the Act of 1875, sec. 3, was indeed to secure the benefit of the fund to the widow or children of every person who at the date of the Act was a contributor. The supplementary charter was not intended to interfere, and did not interfere, with the pecuniary rights of any contributor to the Widows' Fund.

Argued for the defenders and respondents—It was an essential condition of contributing to the Widows' Fund that the contributor should be a member of the Faculty of Procurators—not merely when he became a contributor but at the date of contributing. The Act of 1875, sec. 3, did not alter this condition, and did not provide that any person who was then a contributor should have an indefeasible interest in the Widows' Fund. The claimer James Colquhoun having ceased to be a member of the Faculty had lost the necessary qualification of a contributor to the Widows' Fund.

At advising—

LORD PRESIDENT—The question in this case is whether the widow and children of a person who was a member of the Faculty of Procurators in Glasgow, but who ceased to be so in consequence of having been expelled from the Society in consequence of his having been convicted of a crime, are entitled to the benefits of the Widows' Fund of the Faculty.

The Faculty of Procurators in Glasgow was created a corporation and body politic by royal charter dated 6th June 1796, and it obtained a supplementary charter dated 29th August 1897.

Prior to 1833 the Faculty gave assistance, and under a scheme which it had established granted annuities from its funds to widows and children of deceased members of it. On 10th June 1833 an Act of Parliament was passed for the more effectual management of the fund, and it was declared by that Act that all and each of the members of the Faculty of Procurators in Glasgow who were members of or contributors to the fund, and every other person or persons who should thereafter become members of or contributors to it in manner thereinafter mentioned, should be, and they were thereby declared to be, members of and contributors to the fund established under the provisions of the Act, and should be called “The Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow.” The Society was also incorporated by the Act of 1833.

Only members of the Faculty of Procurators were eligible for admission as members of the Widows' Fund Society, and all who became members of the Faculty and who were under fifty years of age were required to become members of and contributors to the funds of the Society.

The pursuer James Colquhoun became a member of the Faculty and a contributor to the Widows' Fund on 28th February 1870, and made the payments requiring to be made under the circumstances to that fund down to Candlemas 1899.

The Law Agents Act 1874—a public general statute—abolished some of the exclusive privileges previously enjoyed by the Faculty, and in 1875 an Act intituled “The Glasgow Faculty of Procurators' Widows' Fund Act 1875” was passed, the preamble of which, *inter alia*, bore that it was expedient that the provision of the Act of 1833 requiring members of the Faculty to become members of the Widows' Fund Society should be repealed, and that after the commencement of the Act no person should be obliged or entitled to become a member of the Society and contributor to the fund, and that no person other than the widows and children of deceased contributors, and such persons as should at the commencement of the Act be contributors, and their widows and children, should have any interest in the fund.

By section 3 of the Act it was, *inter alia*, provided that from and after the commencement of it (the Act), no person other than the widows and children of then deceased contributors, and the persons who should

then be contributors, and should not have renounced or forfeited their interest, and their widows and children, should have any interest in the fund. At the date of the commencement of the Act the pursuer James Colquhoun was a contributor to the fund.

On 4th October 1899 the pursuer was indicted before the High Court of Justiciary upon a charge of embezzlement, and having pleaded guilty was sentenced to five years' penal servitude.

By a supplementary charter obtained by the Faculty of Procurators in Glasgow dated 20th August 1897, section 3, it was provided that the Faculty should have power to remove the name of any member from the roll. The defenders state on record that section 3 of the charter of 20th August 1897 recognised and confirmed the power, which the Faculty had previously possessed and exercised, of removing any member from the roll for unprofessional conduct.

At a meeting of the Faculty of Procurators held on 2nd March 1900 the Faculty, in respect of the conviction and sentence of the pursuer, struck his name off the roll of the Faculty.

In July 1903 the pursuer wrote to the Treasurer of the Widows' Fund of the Faculty inquiring the amount of arrears of contributions then due by him, and stating that he was prepared to pay the amount of these arrears with interest. In reply to this letter Mr Arthur Forbes, the Treasurer of the Widows' Fund Society, wrote to Mr Colquhoun stating that at a meeting of the Widows' Fund Society held on 4th February 1901 he had been instructed to decline to accept payment of any contributions tendered by him, and to strike his name off the list of contributors. His name was in fact struck off the roll of the Faculty on 2nd March 1900, and the defenders maintain that from that date he ceased to be a member of the Faculty, or to have any interest in it or in any funds belonging to or held by it, and afterwards upon a petition presented by the Faculty to the Court of Session his name was struck off the Roll of Law Agents and Notaries Public by that Court.

The pursuers maintain that the proceedings thus taken by the Society were *ultra vires*, that from the date of the Act of 1875 the defenders' Society was really an annuity or insurance company in liquidation, and that no action on the part of the company in liquidation, or of the Faculty of Procurators, after the passing of the Law Agents Act 1874, and more particularly after the granting of the supplementary charter of 20th August 1876, as it had ceased to have any real connection with the Widows' Fund Society, could entitle the Society to remove a member from the roll on the plea that he was no longer a member of the Faculty, which, it is stated, is to the extent of three-fourths of its membership composed of persons who were not and are not contributors to the Funds administered by the defenders' Society.

The defenders having been called upon to

accept payment of the arrears of contributions which became due by the pursuer James Colquhoun, and having declined to do so on the ground that he had either ceased to be a contributor to, or had been expelled from, the Society on 4th February 1901, the pursuers seek to have what they maintain to be their rights affirmed in this action.

I am, however, of opinion that the contention of the defenders is right and that the Lord Ordinary's judgment should be adhered to.

It appears to me that the condition of a person being entitled to contribute to the Widows' Fund has throughout been, and now is, that he is at the time a member of the Faculty of Procurators in Glasgow, and that no persons were or are entitled to the benefit of the fund except the widows and children of contributors. I agree with the Lord Ordinary in thinking that when James Colquhoun was struck off the roll of the Faculty he lost the necessary qualification for being allowed to be a contributor, so that he had no longer right to contribute to the fund, and that consequently at his death his widow and children will, if their rights then depend upon the Act of 1833, not belong to the class of persons who are alone entitled to the benefits of the fund.

It was maintained on the part of the pursuers that the effect of the Amending Act of 1875 was to secure the benefits of the fund to the widow and children of all persons who at the passing of that Act were contributors, whether they did or did not continue thereafter to be contributors. In support of this contention the pursuers relied chiefly upon section 3 of the Act of 1875, which we were told was passed because, certain exclusive privileges of the Faculty having been taken away by Act of Parliament, it was deemed expedient to repeal the requirement of the Act of 1833 that all members of the Faculty should be contributors to the Widows' Fund. I concur with the Lord Ordinary, however, in thinking that this argument of the pursuers is not well founded. The section in question contains a negative proposition that no person who is not a contributor to the fund should have any interest in it, but it does not declare affirmatively that every person who was then a contributor shall have an interest in the fund. I therefore agree with the Lord Ordinary in thinking that the Act of 1875 does not alter the condition that unless a person is at the time of his death a contributor to the fund his widow and children have no claim to participate in the benefits of it.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD ADAM concurred.

LORD M'LAREN—After giving my best attention to this case I find I am unable to concur in the opinion that has been read, but my opinion will not affect, as I understand, the judgment of the Court, and I shall only indicate the general grounds of it.

My view is that it was a condition of membership of this Widows' Fund that an

insurer should at the time of his insurance be a member of the Faculty of Procurators of Glasgow; but I can find no evidence that it was a condition of joining the Widows' Fund that a party should continue to the end of his natural life to be a member of that Faculty. On the contrary, it appears to me to be reasonably clear that if a member chose to resign his position as a member of the Faculty he would not thereby forfeit the benefit of the insurance which he had effected to make a provision for his family. I need hardly say that when I speak of resignation I am not putting an imaginary case, because it may be that a member of the Faculty of Procurators might desire to join some other legal faculty such as the bars of England, Scotland, or Ireland, and could only do so in accordance with the rules of these higher branches of the profession by severing his connection with this body of solicitors. In such a case I think it would be inequitable that a party who had contributed to the fund for a series of years, should forfeit the benefit resulting from his contract with the Widows' Fund. Of course if it was a term of the contract that he should lose the benefit of the fund on leaving the Society, *cadit questio*; but I see no evidence either in the charters or in the Act of Parliament establishing the Widows' Fund that it was ever made a condition of membership of the fund that the member should continue to be a procurator.

Now, the way in which Mr Colquhoun's connection was severed was that he was expelled by the Faculty from their body in consequence of a conviction for fraud. Nobody suggests that his expulsion was not a proper exercise of the powers of the Faculty of Procurators. Whether it involved the forfeiture of his rights in the Widows' Fund is, as I have endeavoured to state, a different question.

The Faculty defend their action upon their common law right to maintain the purity and integrity of their body, and also upon the terms of their supplemental charter. I do not doubt that the Faculty have power to expel a fraudulent member from their body independently of any express power in their original charter. The granting of the exclusive privilege to a body of solicitors to practise in the Court of Lanarkshire necessarily implied a moral fitness to practise, and would justify the exclusion of anyone convicted of a crime against property such as fraud. But then I do not think it necessary to consider what are the powers of the Crown in regard to a clause of pecuniary forfeiture. In general, the Crown could neither levy a tax nor impose a penalty without the authority of Parliament, but when a penalty or forfeiture is introduced into a charter the validity of the condition and the legality of its exercise do not depend upon the powers of the Crown but upon agreement, because those who applied for the charter, and those who subsequently applied for membership of the Society, must be taken as assenting to all the conditions

of their charter. If, as I think, it is an implied condition that a member shall have the qualification of honesty for the discharge of his duties, he cannot complain of being expelled when convicted of fraud. If the charter or the Act establishing the Widows' Fund had provided that the benefit of the fund should be lost through expulsion, I should admit that anyone joining the body accepts membership on this condition. There is no such condition in writing, and I have been unable to discover any legal grounds on which the Faculty of Procurators when expelling a member should also impose on him the penalty of being deprived of the benefits of a contract of insurance for which he has paid. No private corporation has the right to impose penalties on its members apart from their consent, and it seems to me that this contract right being once established must continue until it is voluntarily relinquished or is devolved by breach of some condition on the part of the assured.

But then it is said that the action of the Faculty is supported by the supplemental charter. I observe that the supplemental charter was obtained long after Mr Colquhoun became a member of the Faculty of Procurators. If it had been proposed in the application for the charter that anyone who was so excluded from the Society, should forfeit his right to the pension fund, it would have been in the power of any member of the Society to make a representation to the Crown against the granting of the power, and according to practice that representation would have been remitted to a committee of Privy Council to be heard on its merits. I am not surprised that no member of the Faculty should have represented against the supplemental charter, because it merely gives the power of expulsion, which I think the Society already possessed, and which it was proper that they should have in express terms. The application for the charter was in terms of the charter itself, and gave no notice to anybody that it was intended to interfere with pecuniary rights under the Widows' Fund. Nor was it likely to occur to anyone that this could be intended, because as a matter of fact a large number of members of the Faculty at that time were not contributors to the fund.

That being so, in my opinion the supplemental charter does not advance the question. I think it leaves the powers of the Faculty exactly where they were, the power of expulsion being for the purpose of discipline only, and for the carrying out of the fundamental object of the charter, viz., the establishment of a Society whose members are intellectually and morally qualified to assist in the conduct of the business of the Sheriff Court.

For these reasons my opinion is that Mr Colquhoun, notwithstanding his having justly incurred the censure of the Faculty, and having been justly expelled from the Faculty, is entitled to make payment of the premiums in order to secure for his family benefits which the Widows' Fund was intended to provide to all its subscribers.

LORD KINNEAR—I agree with the majority of your Lordships.

The Court adhered.

Counsel for Pursuers and Reclaimers—Campbell, K.C.—Macmillan. Agent—J. Gordon Mason, S.S.C.

Counsel for Defenders and Respondents—Ure, K.C.—Hunter. Agents—Webster, Will, & Company, S.S.C.

HOUSE OF LORDS.

(APPEAL COMMITTEE.)

Friday, February 19, 1904.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, Lord James of Hereford, Lord Robertson, and Lord Lindley.)

WALLACE-JAMES v. MONTGOMERIE & COMPANY, LIMITED.

(*Ante*, November 17, 1899, 37 S.L.R. 83, and 2 F. 107; March 8, 1902, 39 S.L.R. 517, and 4 F. 771; and December 18, 1903, 41 S.L.R. 137.)

Process—*Appeal to House of Lords*—*Appeal Sustained*—*Interlocutors of Court of Session Dealing with Several Questions*—*Only One Point Argued in House of Lords.*

In an action for interdict against interfering with a certain piece of land various questions of title to the land, title to sue, and possession were involved. The defenders appealed to the House of Lords against all the interlocutors of the Courts below, but at the hearing of the appeal argued only one of the questions in the case. The appeal was sustained.

Held, by the Appeal Committee, that the defenders were not entitled to an order for the reversal generally of the interlocutors appealed against, but only to an order for the reversal of the interlocutors so far as they related to the question argued before the House.

This was a petition to vary the draft judgment of the House of Lords in the appeal by Montgomerie & Company, Limited, in the action raised against them at the instance of John George Wallace-James, reported *ante* December 18, 1903, 41 S.L.R. 137.

The action concluded, *inter alia*, for interdict against the appellants interfering with a certain piece of land alleged to belong to the burgh of Haddington.

On 7th June 1901 the Lord Ordinary (KINCAIRNEY) pronounced an interlocutor finding (1) that the piece of ground referred to had from time immemorial been in the use and possession of the Provost, Magistrates, and Town Councillors of the burgh of Haddington, and (2) that it had been appropriated from time immemorial for the

use and enjoyment of the burgesses and inhabitants.

On 8th March 1902 the First Division affirmed this interlocutor.

The appellants appealed against the interlocutor of the First Division and against the whole of the Lord Ordinary's interlocutor as well as against certain earlier interlocutors, dated 23rd November 1898, 18th July 1899, and 17th November 1899, in the Outer and Inner House, but at the hearing of the appeal they argued only the point that the piece of ground in question had not been appropriated from time immemorial for the use and enjoyment of the burgesses and inhabitants of Haddington.

On 18th December 1903 the House of Lords sustained the appeal.

After the judgment of the House of Lords had been given, but before the draft order was passed, the respondent lodged a petition setting forth that the appellants were not entitled to a reversal of the whole of the interlocutors appealed from, as they had not argued all the points determined therein; and that in fact they had only argued the one point, viz., that the ground in question had not been dedicated from time immemorial to public use. In his petition the respondent accordingly craved the House to limit the order of reversal to that one point, in respect that a general reversal of all the interlocutors which dealt with other points than the point of appropriation to public use would warrant the inference that the important points not argued had been considered by the House.

The petition came before the Appeal Committee.

LORD CHANCELLOR—The question of title to the land in question was raised, but when the learned counsel came to argue the case he said he would not trouble the House with anything about title. That being so, he allowed that part of the interlocutor to stand.

The Order of the House was in the following terms:—"Ordered and adjudged that the said interlocutor of the Lords of Session in Scotland of the 17th day of November 1899, in so far as it finds the appellants liable in the expenses of the reclaiming note, and also the said interlocutor of the Lord Ordinary there of the 7th day of June 1901, in so far as it finds that the piece of ground referred to in the action has been appropriated from time immemorial for the use and enjoyment of the burgesses and inhabitants, and also the said interlocutor of the Lords of Session there of the 8th day of March 1902, so far as it adheres to the said finding of the said Lord Ordinary, and also in so far as it finds the respondent entitled to expenses, be, and the same are hereby reversed; and it is further ordered and adjudged that the note of suspension and interdict presented by the respondent (complainer below) be, and the same is hereby refused; and it is further ordered that the respondent do pay, or cause to be paid, to the said appellants the costs of the action in the Court of Session; and it is further ordered that the respondent do pay,