

NORTH BRITISH RAILWAY COMPANY, APPELLANTS.
WAUCHOPE, OF NIDDRIE MARISCHALL, RESPONDENT.

SECOND APPEAL.

1862.
March 7th.

Concerted Appeal.—An appeal by concert, in the face of a statutory exclusion (*a*), will not be allowed by the House.
Effect of Leave to appeal.—The fact that the Court below has given leave to appeal will not make the Appeal competent where it is excluded by Statute.

Mr. *Anderson* and Sir *Hugh Cairns* were of Counsel for the Company.

The *Solicitor-General* (*b*) and Mr. *Rolt* for Mr. *Wauchope*.

The point upon which this Appeal was disposed of arose out of the decision in the immediately preceding case between the same parties.

The refusal of the Court below to conjoin the two actions having been affirmed by the House, the causes continued separate. An Appeal in the first action was beyond the time prescribed by the 6 Geo. 4. c. 120. ; and was not rendered competent by the special proviso contained in the 15th section of the 48 Geo. 3. c. 151. (*c*)

(*a*) 6 Geo. 4. c. 120. s. 25. (*b*) Sir Roundell Palmer.

(*c*) The 15th section of the 48 Geo. 3. c. 151. enacts :—“That hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments ; but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the division of the judges pronouncing such interlocutory judgments, or except in cases where there is a difference of opinion among the judges of the said division ; nor shall any appeal to the House of Lords be allowed from interlocutors or decrees of Lords Ordinary which have not been reviewed by the judges sitting in the division to which such Lords Ordinary belong ; provided that when a judgment or decree is appealed from,

The objection was taken by the House itself, though waived by the Respondents, and though the Court below had granted leave to appeal.

NORTH BRITISH
RAILWAY CO.
v.
WAUCHOPE.

The LORD CHANCELLOR (a) :

*Lord Chancellor's
opinion.*

I understand the matter thus:—It was agreed between both parties that for the purpose of a full and ample discussion, the Appeal presented from the Interlocutors pronounced in the second action should open the door to the North British Railway Company to bring before this House the Interlocutors pronounced in the first action. But the second action was not conjoined with the first, so that the suits continued separate and distinct.

An application was indeed made for leave to appeal on a statement that all the orders were interlocutory judgments, and therefore appealable by leave of the Court. The representation was not correct. The leave was of no avail, because the time for appealing in the first action had been allowed to expire.

The other side agreed to make no objection, so that the Appeal in the first action, which was too late, was to be tacked on to the Appeal in the second, which was in time. This cannot be allowed.

There has been an understanding here to which the House can be no party.

You come up by common consent to get a matter discussed before the House, which the House is not competent to entertain. Now, you may take either course which you like,—either that of having the Appeals dismissed without prejudice,—or, in case you

it shall be competent to either party to appeal to the House of Lords from all or any of the interlocutors that may have been pronounced in the cause, so that the whole, so far as it is necessary, may be brought under the review of the House of Lords."

(a) Lord Westbury.

NORTH BRITISH
RAILWAY Co.
^{v.}
WAUCHOPE.

*Lord Chancellor's
opinion.*

are apprehensive that that form of order will involve any difficulty or embarrassment in the Court below, then if you agree together I dare say the House will consent that both Appeals be withdrawn.

The *Solicitor-General*: I think after what has passed, with your Lordships' permission, I will elect that the Appeals be all dismissed without costs and without prejudice.

Adjudged accordingly.

DOBIE—LOCH & MACLAURIN.