Overview | **[1898] AC 375**, | 62 JP 675, | 67 LJQB 559, | 46 WR 609, | 78 LT 361, | 14 TLR 360

THE LONDON TRAMWAYS COMPANY, LIMITED APPELLANTS; AND THE LONDON COUNTY COUNCIL RESPONDENTS. [1898] A.C. 375

[HOUSE OF LORDS.]

EARL OF HALSBURY L.C., LORD MACNAGHTEN, LORD MORRIS, and LORD JAMES OF HEREFORD

1898 April 25.

House of Lords' Decision — Res Judicata — Tramways, Compulsory Purchase of — Tramways Act 1870 c. 78 s. 43.

A decision of the House of Lords upon a question of law conclusive and binds the House in subsequent cases. An erroneous decision can be set right only by an Act of Parliament.

THE London County Council having required the London Street Company, Limited, to sell to them certain portions of their tramways under the Tramways Act 1870, the company claimed to be paid for their tramway undertaking not the mere cost of construction less depreciation but the value as a going and profit-earning concern, and tendered before Sir F. Bramwell, the referee appointed by the Board of Trade, evidence shewing that at the time of the notice to sell there were present or existing profits of the company. Sir F. Bramwell rejected the evidence and made his award for 22,872*l.* on the basis that the Act did not allow him to adopt a method of valuation based upon profits.

The company having applied to the Queen's Bench Division to set aside the award or remit it to the referee for further consideration, the application was refused and this decision was affirmed by the Court of Appeal, following *Edinburgh Street Tramways Co. v. Lord Provost, &c., of Edinburgh* and *London Street Tramways Co. v. London County Council* (1), heard together in 1894. The company brought the present appeal. The only question argued was as to the power of the House to reconsider previous decisions of its own and, if it thought the decisions wrong, to overrule or depart from them in subsequent cases. The facts of the present case were not discussed or

(1) [1894] A. C. 456, 489.

even stated in argument and no distinction between this and the former cases was relied on.

Sir R. T. Reid Q.C. and ***Seward Brice Q.C.*** (***J. R. Paget*** with them) for the appellants. This is in substance a petition to reconsider and overrule the decisions of this House in the *Edinburgh Street Tramways and the London Street Tramways* cases(1) upon the construction of s. 43 of the Tramways Act, 1870. There are certain differences, between the present facts and the facts in those cases, which are set out in the appellants' case, but they are comparatively unimportant. The question is the same and arises upon the construction of the same statute. It is therefore desired to argue as a preliminary point the general question whether the House is bound by its own decision on a point of law in a previous case, and if that is determined in the appellants' favour, then to argue that the above decisions in 1894 were erroneous, for reasons which were not presented to the House in those cases. Upon the general question there is a conflict of authority. In *Perry v. Whitehead* (2) Lord Eldon said: "A rule of law laid down by the House of Lords cannot be reversed by the Chancellor **....** The rule of law must remain, till altered by the House of Lords," plainly implying that the House had the power; and see *Stewart v. Agnew* (3), where the House amended its judgment as to a point on which no decision had been given by the Court of Session, and on which no argument had, through misapprehension, been stated in the House by the party against whom the judgment had been pronounced.

But in *Fletcher v. Lord Sondes* (4) Lord Eldon used expressions to the contrary effect. In *Bright v. Hutton* (5) Lord St. Leonards stated his opinion that "although you are bound by your own decisions as much as any Court would be bound, so that you could not reverse your own decision in a particular case, yet you are not bound by a rule of law which you may lay down, if upon a subsequent occasion you should find reason

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(1) [1894] A. C. 456, 489.

(2) (1801) 6 Ves. 544, 547, 548.

(3) (1823) 1 Shaw App. 413.

(4) (1827) 1 Bli. (N.S.) 144, 249.

(5) (1852) 3 H. L. C. 341, 388, 391.

to differ from that rule; that is, this House, like every court of justice, possesses an inherent power to correct an error into which it may have fallen." Lord Campbell said: "According to the impression upon my mind, a decision of this High Court, in point of law, is conclusive upon the House itself, as well as upon all inferior tribunals. I consider it the constitutional mode in which the law is declared, and that after such a judgment has been pronounced, it can only be altered by an Act of the Legislature," with more to the same effect. In *Tommey v. White* (1) it was held that the House could not rehear a case and correct an error without an Act of Parliament, but that does not touch the present point, which is whether it can in a subsequent case overrule or

depart from its prior decision. In *Wilson v. Wilson* (2) Lord St. Leonards drew this distinction and adhered to his former opinion as to applying the law in subsequent cases. And Lord Brougham said it "is a quæstio vexata, how far we may or may not disregard any one of our own judgments, when applied to another cause." In *Scott v. Maxwell* (3) Lord St. Leonards quoted Lord Loughborough as agreeing that if the House went wrong in point of law, though it could not reverse its decision, yet it was not bound to persevere in error.

[EARL OF HALSBURY L.C.: Lord Campbell in his life of Lord Brougham, Lives of the Lord Chancellors, vol. viii. pp. 400-402, refers to a mistake made by Lord Wynford on pronouncing a judgment of the House, and a bill brought in by Lord Brougham to reverse the judgment and afterwards withdrawn.]

In *Attorney-General v. Dean and Canons of Windsor* (4) Lord Campbell adhered to his former opinion as to the general rule, and Lord Kingsdown doubted, or at all events reserved his judgment. In *Beamish v. Beamish* (5) Lord Campbell, though disapproving of the decision in *Reg. v. Millis* (6) (where the Lords were equally divided and the judgment was only pronounced

(1) (1850) 3 H. L. C. 69.

(2) (1854) 5 H. L. C. 57, 63.

(3) (1854) 1 Macq. 791.

(4) (1860) 8 H. L. C. 369, 381, 391, 459.

(5) (1861) 9 H. L. C. 274, 338, 344, 349, 353.

(6) (1844) 10 Cl. & F. 534.

upon the technical rule of the House that where the numbers are equal semper præsumitur pro negante), held that the House was bound by the decision. Lords Cranworth, Wensleydale and Chelmsford concurred. In *Mersey Docks Trustees v. Gibbs* (1) Lord Wensleydale took the same view, and in *Houldsworth v. City of Glasgow Bank* (2) Lord Blackburn expressed the same opinion. In *Ridsdale v. Clifton* (3) Lord Cairns in delivering the decision of the Privy Council discussed the question of the decisions of final courts of appeal - not only the Privy Council but all courts of appeal - being conclusive in subsequent cases against third parties. And he came to the conclusion that if their Lordships should dissent from a previous decision of the Privy Council they were at liberty to decide upon their own view of the law. This view was concurred in by Lord Watson in delivering the decision of the Privy Council in *Tooth v. Power*. (4) No doubt the decision of the Privy Council is the advice of a Board to the Sovereign, while the decision of this House is a judgment, but the principle which must guide both tribunals is the same, and the House, like every other tribunal, sits as the delegate of the Sovereign. The authorities above cited - though there is no actual decision - shew that this House can on a point of law disregard and depart from its own decision if erroneous. The interpretation of a statute is an a fortiori instance, for the statute may be conceived as repealing by anticipation an erroneous

construction. It is manifest that the House might reverse its own decision if given in ignorance or forgetfulness of a statute having been enacted or repealed.

[They also referred to *Caledonian Ry. Co. v. Walker's Trustees* (5), per Lord Selborne; *Hadfield's Case* (6), per Bovill C.J., Brett and Grove JJ.; *Lord Advocate v. Young* (7); Lindley on Companies, 5th ed. p. 764.]

Freeman Q.C. and ***Hon. Alfred Lyttelton*** for the respondents were not heard.

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(1) (1866) L. R. 1 H. L. 93, 123, 125.

(2) (1880) 5 App. Cas. 317, 335.

(3) (1877) 2 P. D. 276, 306, 307.

(4) [1891] A. C. 284, 292.

(5) (1882) 7 App. Cas. 259.

(6) (1873) L. R. 8 C. P. 306, 311, 313, 318.

(7) (1898) 62 J. P. 199.

---------- ***[1898] A.C. 375 at 379***

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,

[1898] A.C. 375 at 380

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

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(1) 9 H. L. C. 274, 338, 344, 349, 353.

(2) 10 Cl. & F. 534.

[1898] A.C. 375 at 381

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.

Order appealed from affirmed and appeal dismissed with costs.

Lords' Journals, April 25, 1898.

Solicitors for appellants: Murray, Hutchins, Stirling & Murray.

Solicitor for respondents: *W. A. Blaxland*.

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