

COURT OF APPEAL.

Thursday, February 22nd, 1900.

BEFORE A. L. SMITH, COLLINS, AND ROMER, L.JJ.

SYKES AND ANOTHER v. SOWERBY URBAN DISTRICT COUNCIL.

This was an appeal by the plaintiffs from the decision of the Divisional Court (Mr. Justice Darling and Mr. Justice Channell), reversing the judgment of the Halifax County Court Judge (*vide supra*).

Butcher, Q.C. (T. F. Byrne with him), appeared for the plaintiffs; *J. Lawson Walton, Q.C. (W. J. Waugh with him)*, appeared for the defendants.

A. L. SMITH, L.J., said that he agreed that this drain was a "sewer" within the Public Health Act, 1875. The County Court Judge found that the drain was constructed for the more economical and convenient working of the quarry, and in order that the land might be worked more profitably, and that as the drain was not made for sanitary drainage purposes, but for the more beneficial use and occupation of the land, it was a sewer made by the plaintiffs for their own profit within exception (1) in Section 13. The Divisional Court reversed that decision. Section 4 of the Public Health Act, 1875, defined "drain" as "any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed." The drain in the present case was not a "drain" within that definition. A "sewer" was defined in Section 4 as including "sewers and drains of every description, except drains to which the word 'drain,' interpreted as aforesaid, applies, and except drains vested in or under the control of any authority having the management of roads and not being a local authority under this Act." In his Lordship's opinion this drain was a "sewer" within that definition. That being so, did it vest in the defendants as the local authority? That depended upon Section 13, which was in Part 3 of the Act, headed "Sanitary Provisions." That section provided that all existing and future sewers should vest in the local authority, except, first, "sewers made by any person for his own profit." Those words had been the subject of decision on many occasions. The decisions showed that house drains did not come within the exception. The drain in the present case was not a house drain. Considering the findings of the County Court Judge, why was it not a drain made for the plaintiffs' profit? It was made in order that they might work the quarry more economically and conveniently. In *Minehead Local Board v. Luttrell* (1894, 2 Ch., 178) Mr. Justice Romer went through the prior authorities, and pointed out that all of them related to house drains. It was there held that sewers made by a landowner for the purpose of draining a town, the greater part of which stood on his own lands, and for the use of which sewers he levied and was paid a sewer rate by all persons whose houses were connected with his sewers, were sewers made by him for his own profit, and did not vest in the local authority. Then, in *Croysdale v. Sunbury-on-Thames Urban Council* (1898, 2 Ch., 515) Mr. Justice Stirling held that a sewer which was not made for ordinary drainage purposes, but to enable the land on which it was made to be occupied

more profitably, or to avoid expenditure which would otherwise have to be incurred in order that the occupation might be equally beneficial, was made for the profit of the owner within the meaning of the Section, and did not vest in the local authority. Upon the facts and findings of the County Court Judge in the present case, he (the Lord Justice) was of opinion that this sewer was made for the profit of the plaintiff within exception (1) in Section 13, and therefore did not vest in the defendants. The appeal must therefore be allowed.

COLLINS, L.J., concurred. It would seem as if the definitions in Section 4 swept everything which could be described as a drain into the ambit of the Public Health Act, 1875, and though the provisions of Part 3 of the Act were described as "Sanitary Provisions," a drain made for a non-sanitary purpose, *prima facie*, would come within the Act. How were such drains excluded from the Act? That was done by introducing exceptions in Section 13. An ordinary agricultural drain would, apart from the exceptions, be swept into the ambit of the Act, and it was only got out of the Act by means of exception (1) in Section 13. In his opinion this drain was made for the profit of the plaintiffs within the meaning of the exception, and therefore did not vest in the defendants.

ROMER, L.J., delivered judgment to the same effect.

Appeal allowed.

PURE BUTTER.—At the Rhyl County Court, on March 16th, Judge Lloyd had before him the case of *Roose and Co. v. Parry and Co.*, in which the plaintiffs sued to recover damages for breach of warranty and expenses incurred in defending a prosecution in respect of certain butter sold to them by the defendants as pure, but in which the Flintshire Analyst found boric acid to the amount of 10 grains to the pound. The plaintiffs had been summoned under the Sale of Food and Drugs Acts, but the case against them was dismissed, as they were able to prove a warranty from the defendants. The point at issue was whether butter containing the amount of boric acid mentioned was "pure" butter. His Honour decided in favour of the plaintiffs, and awarded £2 2s. damages, with costs. Leave to appeal "within ten days" was granted.

GOLDEN SYRUP.—At the Liverpool City Sessions, on March 13th, an appeal was heard against a conviction (involving a fine of £5 with costs) for selling as "golden syrup" a compound containing 70 per cent. of glucose syrup. The point at issue was whether "golden syrup" was a name restricted to syrup made from sugar-cane. The Recorder decided that it was so restricted, and confirmed the conviction. It is probable that the case will be taken further.

REVIEWS.

REPORTS TO THE LOCAL GOVERNMENT BOARD ON RURAL SANITATION:

(1) Dr. F. St. George Mivart's Report to the Local Government Board on the General Sanitary Circumstances and Administration of the Axminster Rural District, August 10, 1899.

(2) Dr. F. St. George Mivart's Report to the Local Government Board on the General Circumstances and Administration of the Chailley Rural District, October 10th, 1899.

Axminster Rural District occupies the south-eastern extremity of the county of Devon. It contains fifteen contributory parishes, most of