

may be stated shortly as follows—In 1666 the lands of Pitcalzean (of which the defender is now proprietor) were validly burdened and charged with payment of a yearly annuity of 40 bolls of victual, and the right to exact the annuity stood vested in 1673 in Sir John Urquhart of Cromarty. This right was adjudged in 1698 by Mackenzie of Prestonhall in respect of a debt of £500, then due to him by Sir John Urquhart, and the pursuers are now in right of the decree of adjudication.

It is maintained by the defender that the pursuers have no title to sue this action, because the debt for which the adjudication was led has been paid. This fact is not established, but a minute of admissions has been lodged by which the pursuers admit that for the purposes of this case it may be so held and the case decided upon that footing. I am of opinion that even upon such an admission the defence now urged cannot be sustained. Whether that debt has been paid or not is a matter with which the defender has no concern. His obligation to pay the 40 bolls of victual is an existing obligation which he must discharge, and there must be some creditor in that obligation. *Ex facie* of their titles the pursuers are the creditors entitled to enforce and to discharge that obligation. So far as the defender is concerned the pursuers' right to enforce payment of the victual payable out of the defender's lands stands upon an absolute title, although in a question with the representatives of Urquhart of Cromarty that title is redeemable. The defender has no right to state or maintain pleas which are personal to Urquhart's representative, and the pursuers are entitled to decline discussing any such pleas with him.

For this reason, in my opinion, the pursuers, while admitting for the purposes of this case (in order to save time and expense in investigating that matter) that the debt for which an adjudication was led has been paid, have admitted nothing from which the defender can take any benefit. The pursuers on their present title are the creditors, and only creditors, in the defender's obligation, and to their demand for payment it seems to me the defender has no answer. I am therefore of opinion that the judgment of the Lord Ordinary should be affirmed. In form, however, the Lord Ordinary's interlocutor will require to be recalled, as he has decreed "conform to the conclusions of the summons," omitting to notice that those conclusions are alternative, and decree should now be pronounced in terms of the first conclusion of the summons.

In the second action, which is at the instance of Mr Murray, concluding for a reduction of his opponents' title, or declarator that they are not entitled to demand payment of the 40 bolls of victual, the Lord Ordinary's interlocutor will fall to be affirmed. Nothing was said in support of the reclaiming-note against that judgment.

THE LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for Macleod's Trustees — D.-F. Balfour, Q.C. — Dundas. Agents — Mackenzie & Black, W.S.

Counsel for Murray—Graham Murray—Guthrie. Agents—Macandrew, Wright, & Murray, W.S.

Thursday, May 28.

## FIRST DIVISION.

[Lord Kinnear, Ordinary.]

### THE ABERDEEN JOINT PASSENGER STATION COMMITTEE AND THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY v. THE NORTH BRITISH RAILWAY COMPANY.

(*Ante*, June 19, 1890, vol. xxvii. p. 1004, 17 R. 975.)

#### *Railway—Station—Use of Joint-Station.*

The Great North of Scotland Railway Company and the Caledonian Railway Company (the successor of the Scottish North-Eastern Railway Company) were joint-possessors of a passenger station at Aberdeen, the management of which was vested in a joint-committee representative of the two companies.

The Caledonian and North-Eastern Amalgamation Act 1866, which sought to promote the free passage of East Coast traffic between Aberdeen and the South, secured to the North British Railway Company certain "conveniences and privileges" over the lines now possessed by the Caledonian Railway Company, including "the joint or separate use of the offices, stations, sidings, and other accommodation at the several stations . . . of the Scottish North-Eastern lines, including in so far as the" (Caledonian) "company lawfully may," the station referred to. Since 1878 the North British Railway Company had exercised running powers for passenger and goods trains over a portion of the North-Eastern lines from the neighbourhood of Montrose to Aberdeen, and they had been provided with accommodation in the joint-station into which they had been allowed to run their passenger trains.

The joint-committee and the Great North of Scotland Railway Company sought declarator that the North British Railway Company were not entitled without the consent of the Great North of Scotland Railway Company to use the joint-station and the railway through the same, and that the joint-committee were not bound to admit the defenders' traffic into the station.

Held that the North British Railway Company were entitled to the same privileges and uses as the Caledonian Railway Company with regard to the joint passenger station, and that they were only restricted in such uses as the Caledonian Railway Company would be debarred from in a question with the Great North of Scotland Railway Company.

This was an action by the "Joint-Committee" vested by Act of Parliament with the maintenance and management of the Aberdeen Joint Passenger Station, and the "Great North of Scotland Railway Company," to have it declared that the North British Railway Company were not entitled to use the joint-station there or to come within 200 yards upon either side thereof without the consent of the Great North of Scotland Railway Company.

The action was raised in the following circumstances:—Prior to 1866 the traffic between Perth and Aberdeen had been carried by an independent company called "The Scottish North-Eastern Railway Company," who used a station of their own at Guild Street, Aberdeen, but in that year the concern was acquired by the Caledonian Railway Company, and became part of their system.

Shortly before this amalgamation took place arrangements had been entered into between the North-Eastern Company and the Great North of Scotland Company, whose trains run chiefly north of Aberdeen (and who had a separate terminus at Waterloo Station there), with reference to the construction of a joint-passenger station at Aberdeen.

Under the powers of the Denburn Valley Railway Act 1864 the existing joint-passenger station at Aberdeen was built at the joint-expense of the North-Eastern Company and the Great North of Scotland Company.

It was provided by the Act of 1864 (sec. 20) that the new station was to be equally and jointly the property of the two companies, and that it was to be under the management of the "Joint-Committee" (constituted by sec. 22), and further, that the amount of traffic was to regulate the amount of accommodation which each of the companies was to have in the joint-station.

As already mentioned, the Scottish North-Eastern Company was amalgamated with the Caledonian Company by Act of Parliament in 1866, and section 99 provided— "And whereas the railways of the North British Railway Company *via* Berwick in connection with the North-Eastern and Great Northern Railways form a line of communication between the Metropolis and Scotland, and the railways of the North British Railway Company *via* Hawick and Carlisle in connection with the railways of the Midland Railway Company and of the London and North-Western Railway Company other lines of communication between the Metropolis and Scotland; and whereas the lines of the North British Railway Company in connection

with the Scottish North-Eastern lines, with or without other railways, form competing lines of communication with the railways of the company between Dundee, Aberdeen, and other places in the north of Scotland on the one hand, and Edinburgh and Glasgow and other places in the south, east, and west of Scotland on the other, and it is expedient that the free and expeditious transit of traffic of every description should be secured and maintained over the said several lines of communication, and that nothing should be done to impede or obstruct, but that every reasonable facility should be afforded for promoting the free passage and transmission of such traffic: Be it enacted as follows:—The expression 'Scottish East Coast Traffic,' where used in this Act, shall mean traffic of every description passing or destined or directed to pass to or from any place on or beyond the railways which previously to the commencement of this Act formed the undertaking of the Scottish North-Eastern Railway Company, and all extensions and branches of such railways which now belong to or are leased or worked by the company, except the Montrose and Bervie Railway, or which hereafter may belong to or be leased or worked by the company, and every or any part thereof (in this Act subsequently called the Scottish North-Eastern lines), from or to any place on or beyond and *via* the railways forming the undertaking of the North British Railway Company, and every or any part thereof."

Sec. 106.—"The North British Railway Company may for the purpose of conveying Scottish East Coast traffic, run over and use with their engines, trucks, and carriages of every description, the Scottish North-Eastern lines or any part thereof, and the stations, watering-places, works, and conveniences upon and connected with the Scottish North-Eastern lines; and the North British Railway Company shall be entitled to the conveniences and privileges, and be subject to the regulations and obligations" thereafter mentioned.

"(4) The joint or separate use of the offices, warehouses, stations, sidings, and other accommodation at the several stations, wharfs, stopping, loading, and unloading places, sidings, and junctions of the Scottish North-Eastern lines, including, in so far as the company lawfully may, the station at Aberdeen, and all conveniences therewith connected; the extent of such use, and the nature of the arrangements for working the traffic at the respective places, to be determined by agreement or by arbitration, and the payment to the company for the same to be the terminals as respects goods, mineral, and live-stock traffic, and as respects passenger traffic, to be such special payment, if any, as may be determined by agreement or by arbitration; and, further, if at the request of the North British Railway Company, the arbitrator shall order any enlargement or alteration of any of the said stations or places, such enlargement or alteration shall be made by the company, and the annual payment therefor, if any,

shall be settled by agreement or by arbitration."

The pursuers averred (Cond. 7) that while the defenders were entitled to use the joint-passenger station at Aberdeen in so far as the Caledonian Company might lawfully empower them to do so, yet the Caledonian Company could not lawfully empower them to do so if the pursuers, as they now did, withheld their consent; that since 1878 the pursuers had allowed the defenders to run their trains into certain parts of the station, but only under protest and out of regard to the public convenience. They also alleged that the accommodation of the joint-station was not more than sufficient for the traffic of the Caledonian and Great North of Scotland Companies, and that the introduction of the defenders' traffic was causing them serious inconvenience.

The defenders averred as follows—"The defenders have, since June 1878, taken advantage of the powers conferred upon them by the Amalgamation Act of 1866, and have exercised, and still are exercising, the running powers conferred upon them by said statute, *inter alia*, by running their passenger and goods trains over a portion of the Scottish North-Eastern lines from Kinnaber Junction, near Montrose, to Aberdeen. In connection with their passenger traffic they are provided with accommodation in the joint-station at Aberdeen, which has been constructed under the powers of 'The Denburn Valley Railway Act 1864.' The accommodation provided consists of an office or box in the booking hall for the use of their booking-clerk, and the use of a parcels office, as well as a portion of the platform and rails for their trains. The defenders, however, only use the lines of railway forming the southern part of the station, which are part of the undertaking of the Scottish North-Eastern Railway. The defenders are now, and have for years past been, in the enjoyment and possession of the station, and the pursuers are now seeking to eject them therefrom."

The pursuers pleaded, *inter alia*, (4) that being joint-proprietors of the station, the defenders were not entitled to use it without their consent.

The defenders pleaded, *inter alia*, (6) that they were using the station in accordance with their rights.

On 24th October 1890 the Lord Ordinary (KINNEAR) dismissed the action.

"*Note.*—By the Amalgamation Act of 1866 (29 and 30 Vict. cap. 350) the Scottish North-Eastern Railway Company is dissolved, and its undertaking is transferred to and vested in the Caledonian Railway Company. The undertaking so transferred is defined by the fourth section of the statute, and in addition to the railways, stations, and other property of the dissolved company, is declared to include 'all the rights, interests, and estate which the company possesses, jointly or in common with any other company or person.' Among the rights included in this definition is the right of the Scottish North-Eastern Company in the joint-station at Aberdeen.

"The 99th and following sections contain provisions for securing and maintaining the free and expeditious transit of traffic of every description over certain lines, and in particular, over the lines of the North British Railway Company, which, 'in connection with the Scottish North-Eastern lines, with or without other railways, form competing lines of communication with the railways of the Caledonian Company between Dundee, Aberdeen, and other places in the North of Scotland on the one hand, and Edinburgh and Glasgow, and other places in the south, east, and west of Scotland on the other.'

"For this purpose the North British Railway Company are empowered to 'run over and use with their engines, trucks, and carriages of every description, the Scottish North-Eastern lines, or any part thereof, and the stations, watering places, and conveniences upon and connected with the Scottish North-Eastern lines.'

"The joint-station at Aberdeen appears to me to be a station connected with the Scottish North-Eastern line, both physically and by reason of the legal right which the company possessed in that station, and which is now transferred to the Caledonian Company. It is admitted that if the running powers given to the North British did not extend to the Aberdeen station, they would be useless for the purpose for which the statute declares that they are given, namely, for the free transit of Scottish East Coast traffic between Aberdeen on the one hand and Glasgow and Edinburgh on the other. I find no sufficient reason for so restricting the construction of the words in question as absolutely to exclude the North British Railway from the Aberdeen station, with the result of defeating the avowed purpose of the statute.

"It does not follow that the defenders are entitled, without the pursuers' consent, to all the uses of the station which they now enjoy. But the pursuers' counsel have admitted that they are not in a position to obtain a judgment in this action, by which the extent of the defenders' right shall be defined, on the assumption that they are not to be absolutely excluded. The proper course, therefore, appears to be to dismiss the action. A judgment of absolvitor might prejudice questions which are not at present before the Court."

The pursuers reclaimed, and argued—The rights of parties were to be determined by the provisions of the Amalgamation Act of 1866, by which, while the North British Railway Company might have run over the lines at Aberdeen, they were not entitled to use the station. Under the Act of 1864, while the station was the joint-property of the constructing companies, it was *ultra vires* of either of them to admit a third party, so that the words in sub-section 4 of section 106, "in so far as the Company lawfully may," did not confer much benefit on the North British Company, because the Caledonian Company having only a joint-interest were not in a position to convey anything. It was not intended

by this clause to hand over the rights of the Great North Company to the Caledonian without compensation. Such a construction of the statute was opposed to the usual course of action of the Legislature—*Wells v. London and Tilbury Railway Company*, L.R., 5 Ch. Div. 126; *The London and Brighton Railway Company v. The London and South-Western Railway Company*, 4 De Gex & Jones, 362; *Girvan and Portpatrick Railway Company v. Portpatrick Railway Company*, February 3, 1882, 9 R. 510. The statute entitled the North British Company to use only the North-Eastern lines, and this right did not entitle them to enter the station at Aberdeen without paying compensation to the pursuers—*Caledonian Railway Company v. North British Railway Company*, July 16, 1880, 7 R. 1147.

Argued for respondents—The object of the Act of 1866 was more to benefit the public than to give facilities to the North British Company. It was to promote traffic and to facilitate direct communication with England. If the reading of the statute contended for by the pursuers was adopted, through traffic would be destroyed and the public greatly inconvenienced. There was no other station into which the defenders could run their trains, and while the Caledonian could not admit a third party to a *pro indiviso* ownership of the joint-station, they were bound under the statute to afford to the North British Company the same use of the station which they themselves had. The defenders were not liable under the statute (except in certain circumstances which had not arisen) in any money payment to the Great North Company; if any liability did exist the burden of meeting it lay on the Caledonian and not on the North British Company.

At advising—

LORD PRESIDENT—In last reviewing the interlocutor of Lord Kinnear we had occasion to become familiar with the history of the Scottish North-Eastern Railway and its amalgamation with the Caledonian Company, and it is unnecessary for the purpose of the present judgment to go back upon any of these details. It is sufficient to say that by the Act of 1866, which we are now to deal with, the Scottish North-Eastern Company dissolved and the Caledonian Company came into its place as part of the line connecting the north and south of Scotland. The Act of 1866, in so far as it records and gives effect to an agreement between the Scottish North-Eastern and the Caledonian Company, may be passed over in the meantime, because what we have to determine in the present case is how far the North British Railway Company have acquired any rights under that statute.

It is necessary in the first place carefully to consider the 99th section of the Act of 1866, which proceeds upon a recital that “the railways of the North British Railway Company *via* Berwick in connection with the North-Eastern and Great Northern Railways form a line of

communication between the Metropolis and Scotland, and the railways of the North British Railway Company *via* Hawick and Carlisle form in connection with the railways of the Midland Railway Company and of the London and North-Western Railway Company other lines of communication between the Metropolis and Scotland, and whereas the lines of the North British Railway Company in connection with the Scottish North-Eastern lines with or without other railways form competing lines of communication with the railways of the company between Dundee, Aberdeen, and other places in the north of Scotland on the one hand, and Edinburgh and Glasgow and other places in the south, east, and west of Scotland on the other, and it is expedient that the free and expeditious transit of traffic of every description should be secured and maintained over the said several lines of communication, and that nothing should be done to impede or obstruct, but that every reasonable facility should be afforded for promoting the free passage and transmission of such traffic: Be it enacted as follows—the expression “Scottish East Coast Traffic” where used in this Act shall mean traffic of every description passing or destined or directed to pass to or from any place on or beyond the railway which previously to the commencement of this Act formed the undertaking of the Scottish North-Eastern Railway Company, and all extensions and branches of such railways which now belong to or are leased or worked by the company, except the Montrose and Bervie Railway, or which hereafter may belong to or be leased or worked by the company and every or any part thereof (in this Act subsequently called the Scottish North-Eastern lines) from or to any place on or beyond and *via* the railways forming the undertaking of the North British Railway Company, and every or any part thereof.” Now, one cannot help seeing upon the reading of this section of the statute that Parliament attached great importance to the definition of Scottish east coast traffic, showing that by the statute it was intended to give particular facilities for the transmission of that traffic upon the lines with which this Act is dealing.

The 106th section of the statute makes this provision, that “the North British Railway Company may for the purpose of conveying Scottish East Coast traffic run over and use with their engines, trucks, and carriages of every description the Scottish North-Eastern lines or any part thereof, and the stations, watering places, works, and conveniences upon and connected with the Scottish North-Eastern lines.” The 106th section gives the North British Railway Company running powers, and it proceeds thus:—“And the North British Railway Company shall be entitled to the conveniences and privileges, and be subject to the regulations and obligations hereinafter mentioned.” And then, under the 4th subdivision of the section there occurs this

provision:—"The joint or separate use of the offices, warehouses, stations, sidings, and other accommodation at the several stations, wharfs, stopping, loading, and unloading places, sidings, and junctions of the Scottish North Eastern lines, including, in so far as the company lawfully may, the station at Aberdeen, and all conveniences therewith connected; the extent of such use, and the nature of the arrangements for working the traffic at the respective places, to be determined by agreement or by arbitration, and the payment to the company for the same to be the terminals as respects goods, minerals and live-stock traffic, and as respects passenger traffic to be such special payments, if any, as may be determined by agreement or by arbitration: And further, if at the request of the North British Railway Company, the arbitrator shall order any enlargements or alteration of any of the said stations or places, such enlargement or alteration shall be made by the company, and the annual payment therefor, if any, shall be settled by agreement or by arbitration."

Now, I think it is very plain that the object of the Legislature was to give every possible facility for the passage of the Scottish East Coast traffic upon the lines to which this station applies, and that for that purpose they were to be entitled not only to have running powers through the station at Aberdeen, but that they were entitled, under sub-section 4 which I have just read, to the use of the station itself and all the conveniences and privileges connected with that station. No doubt this provision is limited apparently and in words by the insertion of this clause "including, in so far as the company lawfully may, the station at Aberdeen" and so forth.

It has been said that that is a limitation of the accommodation and privileges conferred upon the North British Railway Company. I think it is necessary for the opponents of the North British Railway Company to show in what respect anything has been given to the North British Railway Company which the Caledonian Railway might not lawfully give, and they have not pointed out any such privilege or accommodation communicated to the North British Railway Company which the Caledonian Company might not lawfully give; and therefore I confess I attach very little importance to these words in construing the 106th section of the statute. I think the true meaning was that the East Coast traffic was to enjoy all the privileges enjoyed by the Caledonian Company, not only in using the North Eastern line, but in passing through and using the station at Aberdeen, and the Lord Ordinary in his interlocutor has suggested a conclusive reason for so construing the statute, because if that advantage is not given to the North British Railway Company, the object of the statute in providing facilities for the passage of the Scottish East Coast traffic would fail altogether. The object of the statute

would be defeated by reading these words in such a meaning as to imply that there is some limitation in the amount of privilege or accommodation which the Caledonian Railway Company lawfully may give to the North British Railway Company. It is upon that, I think, very simple ground that I come to the same conclusion with the Lord Ordinary, and hold that the North British Railway Company, with their running powers, and with the privileges and advantages bestowed by the 4th sub-sec. of sec. 106, are just in as good a position as the Caledonian Railway Company, and as the Great North of Scotland Railway Company, in the uses of the joint-station at Aberdeen. I am therefore for adhering.

LORD ADAM—It is desirable to see what the extent of the claim and the contention of the Great North of Scotland Railway Company is in this case. The leading conclusion of their action is to have it found "that the defenders (that is, the North British Railway Company) are not entitled without the consent of the Great North of Scotland Railway Company to use the joint-passenger station at Aberdeen, or any part thereof, or the conveniences connected therewith, for the purposes of their traffic, or to run over or use with their engines, trucks, or carriages of any description, the said station or the railway through the same, or the sidings, accesses, or works, extending for 200 yards on each side of the passenger shed of the said joint-passenger station;" and there are subsidiary conclusions following, so that the claim on behalf of the Great North of Scotland Railway Company is this, that they have the power of keeping the North British Railway Company's carriages, engines, and trains at a distance of 200 yards from the joint-passenger station at Aberdeen. If we are to give effect to that contention, it comes to this, that no train belonging to the defenders using the running powers conferred on them by this Act, can approach the station at Aberdeen without the consent of the Great North of Scotland Railway Company, nearer than 200 yards, and if so, they cannot enjoy the benefit and use of the station.

Now, I think with your Lordship that that depends upon the construction of two clauses, the 99th and the 106th of the Act of 1866. The 99th clause is important, because it defines what the intention of the Legislature was as to the running powers with reference to the East Coast traffic. It is a clause which defines what East Coast traffic is, and it provides—"And whereas the lines of the North British Railway in connection with the Scottish North Eastern lines, with or without other railways, form competing lines of communication with the railways of the company between Dundee, Aberdeen, and other places in the north of Scotland on the one hand, and Edinburgh and Glasgow and other places in the south, east, and west of Scotland on the other"—it is dealing with the traffic between Aberdeen and other places in the south; and then it goes on—"And it is expedient that

the free and expeditious transit of traffic of every description should be secured and maintained over the said several lines of communication, and that nothing should be done to impede or obstruct, but that every reasonable facility should be afforded for promoting the free passage and transmission of such traffic." . . . Everything is to be done to promote the free passage and transmission of, *inter alia*, the traffic between Aberdeen and the South. That is, if I may so call it, the preamble to this part of the bill which sets forth the reason for granting the running powers and facilities mentioned. It is to promote the free transmission of the traffic between Aberdeen and the South, and the claim on the part of the Great North of Scotland Railway Company is this, that notwithstanding that that is the avowed object and intention of the statute, they by the construction and intent of this Act should at their own hand say, "We shall not allow all that portion of the traffic between Aberdeen and the South, carried by the North British Railway Company to come within 200 yards of the joint-station." That is the contention. Now that may be a construction of the Act, but I beg to say that it does not appear to me *a priori* to be a probable construction, for the contention of the Great North of Scotland Railway Company is to do the very opposite of what the Act says is its intention should be done.

When we come to the general powers given in section 106 we find that the powers given are these—"The North British Railway Company may for the purpose of conveying Scottish East Coast traffic"—which in the Act itself includes traffic between Aberdeen and the South—"run over and uses with their engines, trucks, and carriage of every description the Scottish North-Eastern lines, or any part thereof." Then we come to the use of the station, which is the great question here—"And the stations, watering-places, works, and conveniences upon and connected with the Scottish North-Eastern lines." Now, this particular station is not a station, I think, upon the North-Eastern line proper. But I am perfectly clear that the Lord Ordinary's view in his note is right, that it is beyond doubt a station connected with the Scottish North-Eastern Railway, and in that respect I am clear that it falls within the general powers. If it had stopped there I should upon the construction of this clause have held that the North British Railway Company were entitled to the use of this joint-station, just as they were entitled to the use of stations which were wholly the property of the Caledonian Railway Company. But then there is a specialty connected with this particular station, that it was a joint-station, and not the entire property of the Caledonian Railway Company; and therefore the Legislature has thought it right that it should be specially dealt with, and it has inserted a part of a clause for the purpose. Accordingly the clause goes on to say that the North British Railway Company shall be entitled to the

conveniences and privileges, and be subject to the regulations and obligations hereinafter mentioned, and the hereinafter mentioned refers to the 4th sub-section, which provides that they are entitled to the joint or separate use of the offices, warehouses, stations, sidings, and other accommodation at the several stations, &c., of the Scottish North-Eastern lines. That is the stations, and so on, which are the exclusive property now of the Caledonian Railway Company, and then of the Scottish North-Eastern Railway Company, "including, in so far as the Company lawfully may, the station at Aberdeen, and all conveniences therewith connected." Now, what is the meaning of the words "in so far as the Caledonian Company lawfully may?" It is an elliptical form of expression, but I think the meaning is that they are to be entitled to the use of the joint-station so far as the Caledonian Railway Company may themselves lawfully use it. That is to say, that the North British Railway Company were to have exactly the same privileges and uses as the Caledonian Railway Company, and the reason of that is this, the station is a joint station; it was constructed under the Act of 1864, the 20th section of which provides for the powers of the joint-owners—"Each of the said companies shall be entitled to the free use of the joint passenger station for through and local passenger traffic, and in proportion to their traffic, to an equal amount of accommodation therein." That is to say, that the parties who built this station and whose joint property it was, were to have it appropriated for their accommodation, in other words, part of it under this clause, in proportion to their traffic, is to be set aside for the peculiar use of the Great North of Scotland Railway Company and a portion of it is to be set aside for the accommodation of the Caledonian Railway Company. Accordingly I think that the Caledonian Railway Company could not lawfully use that accommodation appropriated and set aside for the Great North of Scotland Railway Company in a common station. And so under the 4th sub-section I do not think the North British Railway Company could, any more than the Caledonian Railway Company, insist on using that portion of the joint station set aside for the accommodation of the Great North of Scotland Railway Company. I think that was the meaning of the words "so far as they lawfully may;" or, in other words, that the North British Railway Company were to have all the powers and privileges which the Caledonian Railway Company could exercise or have in the joint station, but they were not to have the power of interfering, or insisting on any further rights or powers than the Caledonian Railway Company could have in a question with the Great North of Scotland Railway Company. Accordingly, my construction of these words is that the North British Railway Company have every privilege and every use which the Caledonian Railway Company may lawfully have of that joint station, but in exercising

that use they are not entitled, any more than the Caledonian Railway Company would be entitled, to interfere with any parts or portions of that joint station which had been under their joint act appropriated for the use of the Great North of Scotland Railway Company.

That is my construction of this clause, and one sees that if that is the right construction, it is no hardship whatever upon the Great North of Scotland Railway Company, because the traffic with which the Act is dealing is traffic which was formerly brought into that station by the North Eastern Railway Company alone. The same amount of traffic and the same character of traffic—the traffic from the south by all converging lines, was brought in by the North Eastern Railway Company, and was all accommodated in that portion of the joint station which by the Act of 1866 became the property of the Caledonian Railway Company. The difference was this, that that traffic which was formerly brought in by the Scottish North Eastern lines was in future to be partially brought in by the Caledonian and partially by the North British Railway Company under their running powers, and I can see no hardship inflicted on the Great North of Scotland Railway Company to decline to admit the contention that in spite of the preamble of the Act, which says that such traffic is to be facilitated in every way possible, they are to have the power to put a stop to this traffic and to say that all the traffic which the North British Railway Company brings is to be stopped 200 yards from the station. That, in my view, is quite an inadmissible construction. It comes to this, as the Lord Ordinary says, that the proposed construction must lead to the dismissal of this action, because it is impossible under this action to define the extent of use which the North British Railway Company are entitled to have. If any question of that sort is raised, it must be by a different action. But my construction necessarily leads to the conclusion that this action must be decided against the Great North of Scotland Railway Company. I therefore concur with your Lordship.

LORD M'LAREN—I am of opinion that this action was rightly decided by the Lord Ordinary, and I concur in his Lordship's view as reported, with your Lordship's additional observations on the construction of the statute in question. In the arguments addressed to us at the bar, I think the Lord Ordinary's views were really not seriously controverted, but an attempt was made to displace the result at which his Lordship arrived by a very ingenious construction which was attempted to be put on these words, "in so far as the company lawfully may." The argument was that the effect of these words was to make the right of the North British Railway Company entirely dependent on the power of the Caledonian Railway Company to communicate a right to the use of the station; and then it was said, inasmuch as they have only a joint-interest in the

station along with the Great North of Scotland Railway Company, they have no power to communicate anything. And so the North British Railway Company, it was said, could take nothing under that clause.

I think there are two answers to this argument. First, if the meaning suggested was the meaning intended by the Legislature, then certainly Parliament, or the promoters of the bill, took the strangest mode of giving expression to their views, because the natural way of expressing what the reclaimers say is the meaning, would have been to say simply, the North British Railway Company shall have no power to enter or use the station at Aberdeen except with the joint consent of the Caledonian and the Great North of Scotland Railway Companies. But, secondly, I think the argument fails altogether, because it involves an assumption of fact which I take to be unfounded. It was pointed out by Lord Kinnear, in the course of the argument, that the Caledonian Railway Company were not antecedently to this Act in the position of being joint-owners or having a joint-interest in the station. They were receiving under this very statute for the first time the right to use the Aberdeen Railway Station; and the provision is that the North British Railway Company are to have all the rights which the Caledonian Railway Company have, all that they can lawfully communicate out of the joint-interest which they are now receiving. That does not seem to me to involve any reference to the goodwill either of the Caledonian Railway Company or of the Great North of Scotland Railway Company, but it in the first place makes it clear that the right of the North British Railway Company to the station was to be as extensive as the right of the Caledonian Railway Company in the matter of the use, although, of course, it was different in its legal character; and secondly, as Lord Adam has pointed out, it would also have the effect of making it clear that the North British Railway Company were not to interfere with the Great North of Scotland Railway Company in those parts of the station which had been specially appropriated to the accommodation of that company. I am therefore of opinion that the interlocutor under review should be affirmed.

LORD KINNEAR—I remain of the opinion which I expressed in the Outer House. I only desire to add that I concur with, I think, all of your Lordships in thinking that the only question which we have to determine here is whether the Caledonian Railway Company can stop the North British Railway at a point 200 yards south of the passenger shed at Aberdeen, so as to debar the North British Railway Company from a right of passage for its carriages and engines across that portion of the line into the station.

It is now conceded, I think, that the pursuers cannot use the present action for the purpose of regulating the uses of the station to which the North British



Railway Company may be entitled, or of fixing in any way the character and extent of the accommodation which may be lawfully given. They take their stand upon their position as joint-owners of a part of the Scottish North-Eastern undertaking, and say, "In respect of our right of joint-ownership we peremptorily exclude the North British Railway Company from running its carriages and engines over any part of the line within the conclusions of our summons." Now that they are not entitled so to exclude the North British Railway Company, I think with all your Lordships is very clear. I must confess that irrespective of the running powers given to the North British Railway Company by the Act of 1866, I should myself have some difficulty in seeing how these conclusions of the summons could have been sustained in any case. The pursuers rest their right as I have said entirely upon their joint-ownership in this station, but then they are joint-owners of railway lines and a railway station subject to rights conferred by the Legislature upon all other companies and all other persons. Every company has the right to run over the lines of every other company. Of course we all know that that is not a right of any practical value, because the Legislature has given to other companies than the owning company a right of passage only, and has not given the right to such facilities as are necessary to make the right of passage practically available, or to make it a right that could be safely used without the risk of serious injury to the public. But then the difficulty of practically working out a right which the Legislature has given does not prevent it being theoretically a perfectly good right, and it does appear to me that if the Caledonian Company had agreed so to work its signals and points as to enable the North British to run with safety beyond the point 200 yards south of the Aberdeen passenger shed, at which the pursuers desire to stop them, it would have been extremely difficult for the pursuers to say, in respect of their joint-right of property merely, that they excluded such use. They might very well have made it practically of no avail to the North British Railway Company. That is perfectly possible. But to take their stand on their mere legal right, and say, in respect of the joint-right we have we debar everybody at our pleasure from coming on that portion of our lines, would appear to me to be a proposition which it would be very difficult for them to maintain.

But it is not necessary to consider that in determining this action for the reasons your Lordships have given, because the Legislature has undoubtedly conferred on the North British Railway Company just those practical running powers which are necessary to enable the general right given by the General Clauses Act to all companies to be made effectually advantageous. Upon the construction of the clauses of the statute upon which the extent of the running power depends I have nothing to add. I agree with your

Lordship that the action must be dismissed, the particular accommodations to which the North British Railway Company may be entitled or to which the Caledonian Railway Company and the North British Railway Company together may be entitled in the use of this station being a question which we have no means of dealing with in this action.

The Court adhered.

Counsel for the Pursuers—Graham Murray—Ferguson. Agents—Gordon & Falconer, W.S.

Counsel for the Defenders—D. F. Balfour, Q. C.—Dickson. Agents—Millar, Robson, & Innes, S.S.C.

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Tuesday, June 2.

FIRST DIVISION.

[Sheriff of Inverness, Elgin, and Nairn.

EDWARDS AND ANOTHER v. THE PAROCHIAL BOARD OF KINLOSS AND ANOTHER.

*Reparation—Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101)—Ruinous House Demolished by Officer of Local Authority—Ultra vires.*

Section 118 of the Public Health Act 1867 provides that "The local authority and the board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the *bona fide* execution of this Act, and every officer acting in the *bona fide* execution of this Act shall be indemnified by the local authority under which he acts in respect of all costs, liabilities, and charges to which he may be subjected, and every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act shall be commenced within two months after the cause of action shall have arisen."

On complaint that an unoccupied house was dangerous to the public, the officer of a local authority under the Public Health Act pulled it down without intimation to the owner or instructions from the local authority. The local authority, however, adopted his proceedings.

In an action by the owner raised more than two months after the proceedings, held that the officer had acted outwith the provisions of the Public Health Act, that accordingly the three months' limitation did not apply, and that the local authority having adopted the actings of their servant, were liable in damages.