his knowledge after the Sheriff had examined the ground and heard the explanations of the parties, and the views of the engineer whom the Sheriff had called to his aid. In short, when Mr Buchanan appeared and asked to be sisted, the inquiry had taken place, and all that remained to be done was that the parties' procurators should be heard on the results of the inquiry. Under these circumstances it was manifestly impossible that Mr Buchanan or his agent could to any purpose make a speech about an inquiry of which he knew nothing, and to propose to hear him then and there was practically to refuse to hear him at all. What Mr Buchanan's agent is alleged to have proposed was, I think, very reasonable; he asked to be allowed to lodge written answers, or at least to have time given him to consider his position. These requests the pursuers allege to have been refused, and allege that all that was allowed to Mr Buchanan was that his agent should then address the Sheriff—a permission which, as I have already pointed out, was entirely illusory.

Now, I should be slow to say that an award under this section could be set aside merely because the Sheriff deemed a written statement unnecessary in the case of an owner who came and verbally explained his position, even although the other parties had had the advantage of written pleadings. But in the present case the owner was not merely refused the opportunity of stating his views in writing as the others had done, but (what is much more important) he was refused time to inform himself about what had been done in the proceedings, and was only allowed to be heard if he went on to speak of what he necessarily knew nothing.

Such being the averments, they seem to me to constitute a relevant ground of reduction. The pursuer's case is that he, being a proper party to the proceeding, was practically, although not formally, refused a hearing. I do not think that an arbiter's award could be supported in such circumstances, and the Sheriff's decision under the 61st section is for present purposes in the same position as an arbiter's award.

My opinion is therefore that the pursuer's averments are relevant, that the pursuer is entitled to prove them, and that the interlocutor having been pronounced on a record closed on preliminary defences, the case must go back to the Outer House for the requisite procedure.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court recalled the interlocutor reclaimed against and remitted the cause to the Lord Ordinary.

Counsel for Pursuers and Reclaimers The Lanarkshire and Dumbartonshire Railway Company—Reid. Agents—Clark & Macdonald, W.S.

Counsel for Pursuer and Reclaimer Buchanan—Dundas. Agents—J. & F. Anderson, W.S.

Counsel for Defender and Respondent—H. Johnston—W. Thomson. Agents—W. & J. Burness, W.S.

Wednesday, July 18.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

COMMISSIONERS OF THE CALEDONIAN CANAL *v.* COUNTY COUNCILS OF INVERNESS AND ARGYLL.

Company—Railway and Canal Companies—Whether "Company" includes Commissioners—Valuation of Lands Act 1854 (17 *and* 18 *Vict. c.* 54), *sec.* 21—*Rule of Construction.*

The Valuation of Lands (Scotland) Act 1854, by sec. 21, provides that the Assessor of Railways and Canals under this Act shall fix the value of all lands belonging to each railway and canal company.

Held that "company" as so used was not a technical word, and included a body of statutory commissioners charged with the administration of a canal.

The Assessor for Railways and Canals in Scotland assessed the Caledonian Canal and the Crinan Canal, which are administered by the same commissioners as one undertaking, and valued the combined canals for the year to Whitsunday 1894 at *nil*, the loss on the Caledonian Canal more than extinguishing the profit on the Crinan Canal. Against this valuation the County Council of Argyll appealed to the Sheriff of Argyll, who sustained the appeal, fixing the valuation of the Crinan Canal at £290, 19s. 6d. The Caledonian Canal Commissioners, who had objected to the jurisdiction of the Sheriff on the ground that the canals being one undertaking situated in different counties—Argyll and Inverness—the appeal should have been to the Lord Ordinary on the Bills, brought an action of declarator and reduction against the County Councils of Argyllshire and Inverness-shire to have it found and declared that the two canals formed one undertaking, and to have the deliverance of the Sheriff reduced,

The defenders pleaded, *inter alia*—"(3) The pursuers being neither a canal nor a railway company within the meaning of the 21st section of the Valuation Act 1854, the declaratory conclusions fall to be dismissed."

The Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict. c. 54), by sec. 20, provides that "In order to the making-up of valuations and valuation rolls of lands and heritages in Scotland belonging to or leased by railway or canal companies, and forming part of the undertakings of such companies, it shall be lawful for Her Majesty to appoint, as occasion requires, a fit and proper person to be assessor of railways

and canals for the purposes of this Act." Sec. 21 enacts that "the Assessor of Railways and Canals under this Act shall, on or before the 15th day of August . . . enquire into and fix *in cumulo* the yearly rent and value in terms of this Act of all lands and heritages in Scotland belonging to or leased by each railway and canal company, and forming part of its undertaking. . . ."

The Commissioners of the Caledonian Canal were incorporated in 1848 by the Act 11 and 12 Vict. c. 54, which also vested the Crinan Canal in the said Commissioners. The canals belong to Government, and the powers of the Commissioners are merely administrative, being regulated by various Acts of Parliament.

Upon 23rd June 1894 the Lord Ordinary (STORMONTH DARLING) assoilzied the defenders.

"*Opinion.*—The Commissioners of the Caledonian Canal desire by this action to establish that the Caledonian Canal and the Crinan Canal, which are vested in them for public purposes, both form part of their undertaking within the sense and meaning of section 21 of the Valuation Act of 1854, and ought to be valued and assessed as one subject, with the result that the valuation would be *nil*, the loss on the Caledonian Canal more than extinguishing the profit on the Crinan Canal.

"The defenders dispute the proposition that the two canals form one undertaking, but they state another plea which requires to be considered *ante omnia* because it strikes at the root of the declaratory conclusions of the summons. It is to the effect that the 21st section of the Valuation Act applies only to lands and heritages belonging to or leased by railway and canal companies, and that the pursuers are neither the one nor the other.

"I have given anxious consideration to this plea, because, if well founded, it unsettles the practice which has long prevailed of having these two canals valued by the Assessor of Railways and Canals, and also because one cannot help seeing that it must lead to highly inconvenient consequences. If a subject like a canal, running through a succession of assessment areas, is to be valued by the ordinary assessor of the county instead of by the Assessor of Railways and Canals, the valuation must be made without the aid of all those elaborate provisions of the Act of 1854 and amending statutes which have been enacted for the guidance of the special officer. The inconvenience in this particular case is somewhat diminished by the fact that the Caledonian Canal is situated wholly in the county of Inverness, and the Crinan Canal wholly in the county of Argyll. But there are other cases where the inconvenience would be very great. By section 23 of the statute, water companies and gas companies and any other companies having continuous lands and heritages liable to be assessed in more than one parish, county, or burgh, may elect to have their assessment made by the Assessor of Railways and Canals, and I was informed at the debate that this privilege had been largely taken advantage of. Now, if waterworks, like the Glasgow waterworks which run through several counties, cannot be assessed in this way because they happen to be vested in commissioners and not in a company, it is obvious that they cannot get the benefit of the uniform mode of valuation provided for other undertakings of a similar description, and that the assessors of each of the counties through which they pass may all differ as to the proper mode of valuation. Moreover, it is plain that the reason for having a special officer and a special mode of valuation for all such undertakings had nothing to do with the kind of body in which they happened to be vested, but arose entirely from their having a continuous line of property running through a succession of assessment areas. I have therefore had every disposition to come to the conclusion that Canal Commissioners might be held to be included under the phrase 'canal companies.'

"I have, however, found myself unable to come to that conclusion consistently with what I believe to be the true principles applicable to the construction of statutes. The pursuers are not a company in any legal sense. They were in existence as a body of statutory commissioners when the Act of 1854 was passed. The Act omitted to notice them, and I must conclude either that the omission was intentional or that it was accidental. I believe that it must have been accidental; but even in that case it is, I think, beyond the function of a court of law to supply the omission. That must be done by the Legislature itself.

"A question not unlike the present arose in England in 1870 on a construction of section 55 of the Local Government Act of 1858, which enacts that the occupier of any land used only as a railway constructed under the powers of any Act of Parliament for public conveyance shall be assessed in the proportion of one-fourth part only of its net annual value. The question was whether this provision could be construed so as to cover the case of a railway originally constructed without any Parliamentary powers and afterwards sold to a railway company under an Act of Parliament and used for public traffic under the general Railway Statutes. The Court of Queen's Bench decided that it could not, and Lord Chief-Justice Cockburn in giving judgment said—'I cannot see my way to putting such a construction upon section 55 as would meet the equity of the case and include a railway like the present, though I have no doubt the Legislature would have drawn the clause so as to embrace the present case had such a case been present to their minds.' The reference is—*North-Eastern Railway Company* v. *Leadgate Local Board*, L.R., 5 Q.B. 157.

"It follows that the Crinan Canal must, in my opinion, be valued by the ordinary Assessor of Argyllshire, and that the defenders are entitled to absolvitor."

The pursuers reclaimed, and argued—They were liable to assessment (March 19,

1872, 10 Macph. 639), and therefore under the Valuation Act provisions which enacted that railways and canal companies should be valued by a special assessor appointed for the purpose. It was the nature of the undertaking—its being a railway or a canal—that led to this provision; whether its administrators were a company or commissioners was quite immaterial. It would be strange if the two most important canals out of five then in existence were excluded from the benefits of the Act. The Lord Ordinary had needlessly narrowed the meaning of the word "company." There was no reason, especially in an Act passed in 1854, to confine its meaning to that of a joint-stock company engaged in trade. Its evident ordinary meaning contained in any first-class English dictionary was to be taken. That would include a body of commissioners. "The largest ordinary sense is that in which words ought to be construed where there is nothing in the occasion on which they are used or in the context to restrict them"—Tindal, C.J., in *Hughes* v. *Overseers of Chatham*, 1843, 5 Manning & Granger, 80.

Argued for respondents—Admittedly the interlocutor reclaimed against was wrong if a wide and popular sense were to be given to the word "company," but the Lord Ordinary was right in giving it its technical legal sense of an association engaged in trade. The Commissioners were merely administrators; they could not make gain, or sell the undertaking, or introduce new partners. It may have been that the Act of 1854 intended to give the benefit of a special assessor to canal companies engaged in trade. It could easily have expressly included the canals now in question but had not done so, and it lay with the Legislature and not with the Court to bring them under the Act.

At advising—

Lord President — The Lord Ordinary has lucidly set out the considerations which predisposed him to come to the conclusion that canal commissioners may be held to be included in the phrase "canal companies." Those are strong considerations, and I think they are well founded both in the facts which they narrate and the principle which they presume. But his Lordship has felt himself constrained to decide in an opposite sense owing to the literal interpretation which he places on the word "companies." Now, it is to be observed that we are considering an Act passed in the year 1854, and the question we have to determine is what is meant not by the word "companies" now, but by the words "canal companies," and I would interpolate "in Scotland," in 1854. Now, to take the word "company" by itself, I think it will be found that that word has rather acquired a more limited interpretation now than it possessed forty years ago. But Mr Stewart very frankly admitted that if you are to take the word "company" even now in the ordinary sense, or I think as he put it, in a popular sense, that would include such a body as commissioners. I think that is a perfectly fair and accurate concession. Taking the word as a word of ordinary use I think now, and still more then, that to speak of companies does not limit the mind of the reader to companies formed for trading purposes, but includes any organisation of men who are concerned in some common purpose. But then, as I have said, we need to consider what was meant by the Legislature in 1854 by "canal companies," and as the Act applies to Scotland alone, by "canal companies in Scotland." Now, we are told that at that date there were five canals in Scotland. Of these, two were those now in question—the Caledonian and Crinan Canal—and these two large undertakings were in the hands of those self-same Commissioners incorporated in 1848. The other canals can hardly be said to compare, although three in number, in importance with the two which I have named; or at all events their importance is not over-weening, and now that leads us to this curious result that if the argument of the respondents in this reclaiming-note be right, the Legislature intended, when describing the mode of valuation and the officer to be engaged in the valuation of canals, to have made this distinction, that some of the canals were to go to the new Assessor of Railways and Canals, and other canals were to remain under counties. It had been found that there were manifest inconveniences in the original way of getting canals valued, and those inconveniences applied quite as much to canals in the hands of commissioners as to canals in the hands of companies. Nay, the difference in the proprietorship between those two is apparently irrelevant to the considerations which made a change in 1854 expedient and advisable. Therefore I think that it is an exceedingly hard contention which is urged upon us by the respondents in the reclaiming-note, that the Legislature in taking the word "companies" deliberately intended to make that artificial and unreasonable distinction between the two bodies.

It was suggested as a last resort by Mr Stewart that it might be intended to confer some favour upon canals in the hands of trading companies, and the same favour be suggested for the transference to the Assessor of Railways and Canals. That there should be any favour in that operation is not manifest, and does not appear on the face of the Act of Parliament. And what is more, I am at a loss to conceive why undertakings vested in the hands of commissioners should be put to a disadvantage with undertakings vested in the hands of trading companies, and to assign any reasonable ground of action to the limitation which is proposed to be effected seems to me entirely unavailing and unsuccessful.

Then it is said, "Oh! but we are not to enlarge the question." I do not think that any principle of that kind applies to this case; so far as can be discovered, it is the nature of the undertaking itself which is directed to be

changed, and it is rather to create an exception from the principles stated as the result of the argument of the respondent, than to limit the exception. Therefore, all these things considered, it seems to me that the argument of the respondents fails, and that there is no reason to confine the word "companies" to that very narrow and artificial limitation.

I am glad to say that in reversing the Lord Ordinary's interlocutor we are giving effect to the conclusion which his Lordship would fain have arrived at, and it seems to me to be the one most consonant with the manifest purpose of the Act and also with its real object.

LORD ADAM—I am of the same opinion. As I understand it, the question arises under the 21st section of the Valuation Act of 1854, which provides that the Assessor shall inquire into and fix the rate or value of all lands and heritages in Scotland belonging to railway and canal companies. It is argued to us—and the view is supported by the Lord Ordinary—that these words "belonging" to a railway or "canal company" must be read in a restricted and limited sense, because that is really what it comes to. It is said that this applies only to railways and canals which are the property of companies in the sense of being engaged in trade, but not to canals or railways which are vested in the hands of commissioners. The distinction between the two is no doubt very wide, because, as was pointed out, commissioners holding for a public purpose have no personal interest in what is called the stock, and make no gain. And on the other hand there are companies which of course exist wholly for gain. As I understand the argument, it was said that the Act was limited to trading companies. In the first place we know of our own knowledge, and it has been brought out at the bar, that ever since the passing of the Valuation Act of 1854 canals, railways, water-works, and all those undertakings which are now vested in statutory commissioners, have all been treated as falling under the provisions of the Act. A similar expression and distinction was never hinted at that the one being vested in directors and the other in commissioners would make any distinction. I can see no reason why those principles of valuation which are referred to as being proper and effective in the case of railways and canals belonging to private companies, should not equally be applied to railways and canals when they are in the hands of commissioners. There is no suggestion made why there should be a distinction drawn in those two cases. Now, it is in that state of circumstances that we come to consider this question, and with this further admission, as your Lordship pointed out, and which I think is a very proper admission, that the word "company" in its ordinary and popular sense is quite sufficient to include commissioners as well as directors of other companies. Now, why should not we give effect to that? I agree with your Lordship that we should give effect to it. I see no reason why we should not in this case. Therefore I think that the Lord Ordinary's interlocutor should be recalled.

LORD M'LAREN—This question arises in an action brought for the purpose of determining whether the undertaking of the Caledonian and Crinan Canals ought to be valued separately or as one subject. A question has been raised by the County Council of Argyllshire to the effect that the valuation of these public undertakings does not fall within the series of clauses beginning at the 20th of the Lands Valuation Statute of 1854. The ground of the objection is, that according to the respondents' contention the commissioners in whom are vested the management of these undertakings do not constitute a company in the sense of the Act. It is important to notice, I think, that in the first and leading clause, the 20th, the "company" are not mentioned as the authority under whom any obligation is made; but the word is only used as part of the description of the undertaking, because the clause means in order to the making up of the valuation roll of all lands and heritages in Scotland, &c., that it shall apply to all railway and canal companies. That is a familiar way of describing not only the whole railways and canals in Scotland, but the whole of the undertakings associated with these subjects.

Now, I agree with your Lordship that companies are to be taken in the ordinary and not in a technical meaning. In its most extended meaning the word "company" is an association of persons for a lawful purpose; and it has also received a more restricted meaning by which is understood a body incorporated by the public and for trading purposes. But according to the usage in Scotland there does not seem to be any fixed term for describing an association of persons for trading, or professional or other persons. In the case of professions we have the association of professional persons variously described as faculties, societies, and colleges, these just being the English translation of the well-known terms of description of corporations and private societies, and the usage of the country admitting a varied phraseology in the description intended to be taken by companies, whether in trade or not in trade. I think it is impossible, consistent with any sound reading or construction, to confine the meaning of this word "company" to trading companies when we see that such a limited meaning is not consistent with the purposes expressed in the series of clauses establishing a new form of valuation of subjects which extend over more or less than one parish or county. Then the meaning of a word in an Act of Parliament, I think, must be fixed just like the meaning of a word in a contract, or in any other written instrument which the Court may be called upon to construe. One of the best guides in ascertaining the meaning is the contemporary use by persons interested in such undertakings when the Act was

passed, the word used being a word of popular signification. I should think that the uniform practice, extending over a period of more than forty years, under which these public undertakings, not carried on for profit, had been valued by the Assessor of Railways and Canals, is very strong evidence of the meaning attributable to the words at the time when the Act was passed. I agree with your Lordship in thinking that the existing method of valuation ought not to be disturbed. I think the Lord Ordinary has stated the construction in a way to which no exception can be taken; but his Lordship has not given sufficient weight to the practice, or rather to the history of the past usage, following upon the Act, and which I think ought to be decided in the ordinary and popular sense.

LORD KINNEAR concurred.

The Court repelled the 3rd plea-in-law for the defenders, recalled the interlocutor reclaimed against, and remitted back to the Lord Ordinary.

Counsel for the Pursuers and Reclaimers —Wilson. Agent—James Hope, W.S.

Counsel for the Defenders and Respondents — H. Johnston — Graham Stewart. Agents—M'Neill & Sime, W.S.

Friday, July 6.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

IRELAND & SON *v.* THE MERRYTON COAL COMPANY.

Contract—Coal Company—Construction of Contract—Contract to Deliver a Quantity of Coal in Equal Monthly Quantities—Measure of Damages.

A company of coalmasters offered to deliver to a firm of coal exporters 3000 tons Ell coal "over next four months in average monthly quantities, delivery in shipping lots of 4/600 tons at a time on due notice being given," and the coal exporters accepted the above quantity, "delivery in about equal monthly quantities over the next four months."

Held that the coalmasters were not bound under the contract to deliver 3000 tons in all, the quantity not delivered in one month being delivered in another, but that the contract was for monthly deliveries of about 750 tons of coal until 3000 tons had been delivered during the four months, each month's delivery being separate and separable, although the rights and obligations *hinc inde* arose out of one contract for 3000 tons of coal.

On 1st May 1893 David Ireland & Son, coal merchants and exporters, Dundee, wrote to the Merryton Coal Company, coalmasters, Merryton, near Hamilton—"We have an inquiry for Hamilton Ell, shipment during the next few months, and might arrange 3000 tons at 7s. f.o.b. Grangemouth, in lots of 4/600 tons." On 2nd May the Merryton Coal Company replied—"We have your memo. of 1st inst. We would take the 3000 tons Ell coal at 7s. per ton f.o.b. G'mouth, for delivery over next four months in average monthly quantities. Delivery in shipping lots of 4/600 tons at a time on due notice being given. We don't guarantee delivery during strikes or stoppage of pits." On 8th May David Ireland & Son accepted the offer of the Merryton Coal Company by letter in the following terms—"Referring to yours of 2nd, we are glad we have now succeeded in placing the 3000 tons of Ell, and accept this quantity at 7s. f.o.b. Grangemouth, delivery in about equal monthly quantities over the next four months."

In November 1893 the Merryton Coal Company raised an action against David Ireland & Son for £274, 1s. 7d. as damages for breach of the above contract.

In December 1893 David Ireland & Son raised a counter action against the Merryton Coal Company for £238, 17s., also as damages for breach of the contract.

The actions were conjoined, and a proof allowed, the result of which, so far as it bears upon the legal question at issue, sufficiently appears in the opinions of the Lord Ordinary (STORMONTH DARLING) and Lord Trayner.

On 20th March the Lord Ordinary pronounced the following interlocutor:—"Decerns against David Ireland & Son for payment to the Merryton Coal Company of the sum of £157, 4s. 9d. sterling: Finds the Merryton Coal Company entitled to the expenses of the action at their instance against David Ireland & Son up to 9th January 1894: Finds David Ireland & Son entitled to the expenses of the action at their instance against the Merryton Coal Company up to the date of the conjunction of the processes, and to expenses in the conjoined processes to the extent of one-half of the taxed amount thereof, &c.

"*Opinion.*—There are various questions raised on record in these cross actions, but the only matter which went to proof and remains for decision is a claim of damages for breach of contract by Ireland & Son against the Merryton Company.

"The contract was concluded on 8th May 1893, and was for the sale by the company to Ireland of 3000 tons of Ell coal at 7s. per ton f.o.b. at Grangemouth, delivery during the next four months, in about equal monthly quantities, and in shipping lots of 4/600 tons at a time, on due notice being given. The sellers also stipulated that they did not guarantee delivery during strikes or stoppage of pits.

"The parties differ as to the meaning of the contract. Ireland, the purchaser, maintains that the contract was essentially one for the sale of 3000 tons, and no less, to be reasonably spread over the period of delivery, and that this period was either the months of June, July, August, and September, or at all events the period from 8th May to 8th September. The