and maintain in all time coming at their own expense one accommodation bridge over or under the branch railway intended to be formed," and there is a provision that "plans and sections of the bridge to be constructed by the said company, and of the approaches to the said bridge, shall be submitted to our engineers before the construction thereof is commenced." The words which I have last read prove to my mind that under the obligation to provide an accommodation bridge it was in the contemplation of both parties that this bridge was to include approaches. Because if there were to be no approaches, or if the formation of approaches were to be left to the proprietor himself, then I could see no object in requiring the company to provide for plans of approaches which they were not to construct, and for submitting these to the parties who are in this case to construct them at their own expense or not to construct them at all.

I agree with the Lord Ordinary also in thinking that in the absence of excluding words the obligation to construct a bridge means a completed bridge—not a bridge with piers and girders at a different level from the roadway, or an arch with abutments at a different level from the roadway—and for this good reason, that the motive of the obligation is to give a passage where the continuity of the road is interrupted. Where that interruption of continuity exists, whether caused by a river crossing the road or by a railway (which of course cannot be traversed in safety by passengers), the motive of the construction of a bridge is just the same—to give a passage and to restore the continuity of a road which is interrupted by the river or railway. Now that object would not be obtained unless the necessary approaches were superadded to what in the more restricted sense may be called a bridge. And if one may appeal to the ordinary use of language (though that is always subject to the observation that people do not always understand the same words in the same sense), I think according to the ordinary use of language the word "bridge" would not be limited merely to the arch or girders and their supports, but would include all that was necessary to effect a safe passage from one side to the other of the obstacle to be surmounted. I am therefore of opinion that the Lord Ordinary's interlocutor is right on the merits.

With regard to the question of time, if your Lordships agree with me I should be disposed to give a slight extension of time to the Railway Company on this ground, that the agreement does not specify any time, and therefore the law will imply a reasonable time. Now I do not profess to have such practical knowledge of bridge construction as to know for myself what would be a reasonable time. But when we are dealing with a corporation like the Caledonian Railway Company, though we do not take their arguments for more than they are worth, yet if they assure us that their engineers cannot undertake to complete the bridge within the time proposed I feel bound to accept that statement, and to give them the necessary extension of time. Of course that would not be very great—I think three months is asked for.

LORD PEARSON—I entirely agree with all your Lordship has said.

LORD JOHNSTON concurred.

The Court pronounced this interlocutor:—"... Vary said interlocutor [of 5th June 1906] by deleting therefrom the words 'and that within the period of one month from this date,' and substituting therefor the words 'and that within the period of three months from the date of this interlocutor of the Inner House': *Quoad ultra* adhere to the said interlocutor and decern."

Counsel for Pursuers and Respondents—M'Clure, K.C.—Spens. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for Defenders and Reclaimers—Guthrie, K.C.—Blackburn. Agents—Hope, Todd, & Kirk, W.S.

Saturday, July 14.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

ABERDEEN CITY PARISH *v.* CALEDONIAN RAILWAY COMPANY.

Railway — Poor Rates — Deductions from Annual Value—"Repairs, &c."—Deductions to be Calculated as on Whole Railway and not as on Subjects in Parish—Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 83), *secs.* 37 *and* 45—*Lands Valuation (Scotland) Act* 1854 (17 *and* 18 *Vict, c.* 91), *sec* 22.

Held that the deductions from the yearly value in the parish, as entered in the valuation roll, for repairs, &c., which a railway company is entitled to under section 37 of the Poor Law (Scotland) Act 1845, are to be calculated "at the same percentage as the repairs, &c., over the whole undertaking bear to its *cumulo* valuation," and do not depend on the character of the railway property, *e.g.*, stations or permanent way, within the parish.

The Poor Law (Scotland) Act 1845 (8 and 9 Vict. c. 83) enacts—section 37—"And be it enacted that in estimating the annual value of lands and heritages the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year, under deduction of the probable annual average cost of the repairs, insurance, and the expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same. . . ."

Section 45—"And be it enacted that in cases where any canal or railway shall pass through or be situate in more than one parish or combination, the proportion of the annual value thereof on which such assessment shall be made for each such parish or combination shall be according to the number of miles or distance which such canal or railway passes through or is situated in each parish or combination in proportion to the whole length."

The Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. c. 91), section 22, enacts—"The yearly rent or value, in terms of this Act, of the lands and heritages in any parish, county, or burgh, belonging to or leased by any railway or canal company, and forming part of the undertaking of such company, shall be ascertained as follows—that is to say, there shall be deducted in the first place from the *cumulo* yearly rent or value of the whole lands and heritages in Scotland as aforesaid of each such railway or canal company a sum equal to three pounds per centum of the whole cost as aforesaid of the stations . . . and other houses and places of business in Scotland of and connected with the undertaking . . . and the proportion of such diminished *cumulo* rent or value corresponding to the lineal measurement of the portion of the line . . . of such railway or canal company situated in such parish, county, or burgh, as compared with the lineal measurement of the entire line . . . with the addition of a sum equal to three pounds per centum of the cost as aforesaid of any station . . . or other house or place of business within such parish, county, and burgh, of or connected with the undertaking . . . shall be deemed and taken to be the yearly rent or value, in terms of this Act, of the lands and heritages in such parish, county, or burgh, belonging to or leased by such railway or canal company and forming part of its undertaking."

The Lands Valuation (Scotland) Amendment Act 1867 (30 and 31 Vict. c. 80), sec. 4, alters three per centum in the above-quoted section to five per centum.

On 30th May 1905 the Parish Council of the City Parish of Aberdeen presented a petition in the Sheriff Court at Aberdeen, in which they sought to recover from the Caledonian Railway Company the sum of £452, 13s. 8d. as the poor and other parochial rates due by the defenders, as assessed on their undertaking within the parish. The sum on which the assessment had been made had been arrived at by allowing, under section 37 of the Poor Law Amendment (Scotland) Act 1845, a deduction of 30 per cent. from the yearly value appearing in the valuation roll. The company claimed a larger deduction, and had offered to accept a deduction of 35 per cent., while maintaining that they were really entitled to 41·71 per cent. The company's undertaking within Aberdeen City Parish consisted of a terminus station, offices, and a small portion of permanent way.

The pursuers, *inter alia*, pleaded—"(3) The deductions claimed by the defenders in respect of repairs, insurance, and other expenses, so far as regards stations and other erections, being based on the *cumulo* cost of such repairs, &c., over their whole undertaking, and the defenders being only entitled to a deduction of the probable average cost of such repairs, &c., applicable to the stations and other erections lying within the pursuers' parish, the defences are irrelevant and should be repelled."

The facts of the case are given in the Sheriff-Substitute's note (*infra*).

On 28th October 1905 the Sheriff-Substitute (ROBERTSON) found that the deduction of 30 per cent. allowed by the pursuers upon the gross value of the defenders' undertaking within the City Parish was as much as the defenders were entitled to, and granted decree as craved.

"*Note.*—The question to be decided in this case is the amount of deduction the defenders are entitled to have taken from their valued rent before poor and school rates are imposed.

"The deductions are fixed by section 37 of the Poor Law Act of 1845, and are stated to be the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same. The manner of dividing up the *cumulo* value of the railway into the different parishes is provided by section 45 of the above Act, as modified by the Lands Valuation (Scotland) Act of 1854, sections 21 and 22, and subsequent Acts. It is described in Deas on Railways (Ferguson), p. 854.

"In the present case the Railway Company produces a statement showing the cost of repairs, &c., over *its whole system* for six years, by which it appears that taking these six years the average cost of repairs, &c., over the whole system is 41·71 per cent., and they claim this deduction from the valued rent of the Aberdeen City Parish. The Parish Council offered 25 per cent., and subsequently 30 per cent., and the Railway Company have offered to accept 35 per cent., but the parties cannot get nearer each other. The point of principle at issue is shortly this. The Railway, as I have stated, claim a deduction of 41·71 from the proportion of their total valuation effeiring to the Aberdeen City Parish, *i.e.*, £5217. The pursuers argue, in the first place, that six years is too short a period, but secondly, and chiefly, they point out that the value of the Railway Company's property in the parish consists mainly of the value of station buildings, &c., the value of the line being only £612, while that of the station, &c., is £4605. Further, that it appears from the statement lodged by the Railway Company themselves that the cost of repairs, &c., upon stations does not constitute anything like so serious a yearly burden as the maintenance of the permanent way, nor does it amount to anything like the same percentage of the original cost, and further, that it is not an increasing burden. That by section 34 of the Act of 1845 it is clear that it is the lands and heritages within the parish that

must be assessed, and similarly it is argued that the deduction under section 37 must be the deduction applicable to the lands and heritages within the parish. If this is sound, pursuers argue that obviously it would be unfair to allow the average deduction over the whole system to this parish, because in point of fact, taking the average deduction (*a*) from £612 worth of permanent way, and (*b*) £4605 worth of station buildings, &c., and adding them together, they would amount to a much less proportion of the total sum than 41 per cent.

"I must say I see difficulties in carrying out pursuers' contention here, and I dare say in some parishes it may result in anomalous results. In many respects it would save trouble and come to pretty much the same thing in the end to adopt the Railway Company's contention. But if it is to be strictly construed, I think the pursuers are right. It is the lands and heritages within the parish that are assessable, and I think it should be the deductions properly falling to these lands and heritages that should be made.

"I therefore adopt pursuers' contention, and in respect of their offer fix 30 per cent. as the amount of the deduction to be allowed."

The Railway Company appealed, and argued—The method of arriving at the valuation of the railway within a parish was prescribed by the Poor Law Act of 1845. The *cumulo* value of the whole undertaking was to be taken and divided among the parishes in proportion to the mileage therein. It followed that the proper deduction for repairs was the average cost thereof over the whole undertaking. The Lands Valuation Act of 1854 did not alter the *cumulo* basis although it provided for the deduction, before division by mileage, of 3 per cent. on the cost of stations; nor did subsequent Acts, although the 3 per cent. on the cost of stations provided by sec. 22 of the 1854 Act was altered to 5 per cent. by sec. 4 of the Lands Valuation (Scotland) Amendment Act of 1867 (30 and 31 Vict. c. 80). Division of the undertaking as a whole still remained the method for obtaining the annual value in the parish, and the repairs must also be on the undertaking as a whole. The parish was not entitled to get the benefit of the profits over the whole system and yet limit the deductions for repairs to the actual expenditure thereon within the parish. The following cases were referred to:—*Edinburgh and Glasgow Railway Company* v. *Adamson*, March 10, 1853, 15 D. 537 (at p. 542); and Sequel, June 28, 1855, 17 D. 1007, *aff.* June 7, 1855, 2 Macq. 331; *Edinburgh and Glasgow Railway Company* v. *Meek*, December 10, 1864, 3 Macph. 229, at p. 236; *Edinburgh and Glasgow Railway Company* v. *Hall*, January 19, 1866, 4 Macph. 301, 1 S.L.R. 113; and 2 S.L.R. 159; *Inspector of Poor of St Vigeans* v. *Scottish North Eastern Railway Company*, May 9, 1870, 8 Macph. (H.L.) 53, 7 S.L.R. 459; *Magistrates of Glasgow* v. *Hall*, January 14, 1887, 14 R. 319, 24 S.L.R. 241.

Argued for the respondents—Section 45 of the Act of 1845 and sections 21 and 22 of the 1854 Act were to be read together. The same method should be followed in fixing the amount to be deducted as in fixing the value of the railway within the parish, *i.e.*, the actual amount of the permanent way therein should be taken and the amount representing stations, offices, &c., and the deduction for repairs should be calculated as on the subjects within the parish, *i.e.*, stations on which the cost of repairs was small, or permanent way on which it was large. Any other method would be unfair. The real question was what was the amount of average cost of maintaining the lands and heritages *in the parish* in their actual state. The Act of 1854, by providing for an allowance for stations, offices, &c., altered the method of assessment laid down in sections 34, 37, and 45 of the Act of 1845, and the words, "under deduction of the probable annual average cost of repairs," &c , in section 37 of the 1845 Act meant repairs "within the parish." These words were implied in the section. Reference was made to *Edinburgh District Railway Company* v. *Arthur*, February 24, 1858, 20 D. 677.

At advising—

LORD PRESIDENT—[*His Lordship's opinion was read by Lord M'Laren, and was as follows*]—The point to be decided is as to what deduction a railway company is entitled to have taken from its valuation in respect of sec. 37 of the Act of 1845; and the point of controversy lies in whether the "repairs, &c."—the cost of which form a deduction under that section—are to be a proportional part of the repairs of the railway as a whole, or are to be the repairs of the particular portions of the railway property which lie within the particular parish.

The Sheriff-Substitute has decided in favour of the latter contention, and the key to his judgment may be found in a single sentence of the pursuers' contention which he subsequently adopts. He says "that by sec. 34 of the Act of 1845 it is clear that it is the lands and heritages *within* the parish that must be assessed, and similarly it is argued that the deduction under sec. 37 must be the deduction applicable to the lands and heritages *within* the parish."

I think that the Sheriff-Substitute has here overlooked the fact that whereas his description of the valuation under sec. 34 is obviously true of ordinary lands and heritages, it does not apply to railways, which are separately dealt with by sec. 45. Now that section provides that in all cases where any canal or railway passes through or is situate in more than one parish or combination, the proportion of the annual value thereof on which such assessment shall be made shall be according to the number of miles or distance which such canal or railway passes through such parish or combination in proportion to the whole length.

It is quite clear from this section that

the valuation is the *valuation* of the railway as a whole—the *assessment* is on a proportional part of that valuation. If authority for this were needed it is to be found in the judgment of Lord Colonsay in the case of *Edinburgh and Glasgow Railway Company* v. *Adamson*, quoted with approval by the Lord Chancellor in *Inspector of Poor of St Vigeans* v. *Scottish North-Eastern Railway Company*, who says (8 M. (H.L.) 58), "the actual value, positive or relative, of the part of the railway situated within each parish is excluded from the inquiry. The railway is to be taken as a whole, and the annual value thereof is to be ascertained, and when the annual value as a whole shall have been ascertained, then that annual value is to be apportioned according to the enactment of the statute."

It seems to me, therefore, that the Sheriff's argument that the deduction must square with the valuation goes to exactly the opposite result from which he has arrived at, and I am of opinion that under the Act of 1845 the deduction under sec. 37 must be a deduction applicable to the valuation, *i.e.*, in the case of railways to the valuation as a *unum quid;* after which, the net value being settled, the proportion of length will fix the amount of the assessable subject for each parish.

It was, however, argued before your Lordships that however that might be under the Act of 1845, the Valuation Act of 1854 made a difference. I need not repeat the provisions of this familiar Act. By it valuation was transferred to the assessor, deduction under sec. 37 being left with the poor law authority, who must take the valuation as they find it given them. All that has been settled by a series of cases, of which *Edinburgh and Glasgow Railway Company* v. *Meek* (3 Macph. 229), and *Magistrates of Glasgow* v. *Hall* (14 R. 319) may be taken as examples. Further, a special assessor was created for railways, and special directions were given to him under sec. 22. But when sec. 22 is scanned it will be seen, I think, that the initial proceeding, and indeed the only proceeding of valuation, is just as it was under sec. 45 of the Act of 1845, *i.e.*, a valuation of the railway as a *unum quid*. The subsequent provision is not one of valuation but is a prescribed arithmetical operation, depending not on valuation but on cost of certain things. It seems to me therefore that in this matter we are left just where we were under the Act of 1845, and the deduction is a deduction from the whole valuation of the railway, which is subsequently applied to the particular parish by the proportional method.

I am therefore for recalling the judgment, and I think justice will be done by fixing the percentage at what the railway company extrajudicially offered to agree to, viz., 35 per cent., and finding the railway Company entitled to expenses in both Courts.

LORD KINNEAR—I agree.

LORD PEARSON—I am of the same opinion.

LORD M'LAREN—I did not take part in the hearing, and therefore give no opinion.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 28th October 1905: Find that the deductions which the defenders and appellants are entitled to have made from the valuation in respect of the probable average annual cost of repairs, insurance, and other expenses under section 37 of the Poor Law (Scotland) Act 1845 are to be calculated by deducting from the rental of the undertaking within the parish an amount for repairs, &c., at the same percentage as the repairs, &c., over the whole undertaking bear to its *cumulo* valuation: And in respect of the offer on record by the defenders and appellants to restrict their claim for deductions to 35 per cent., Find that the defenders and appellants are entitled to a deduction of 35 per cent. from the valuation of their lands and heritages within the City Parish of Aberdeen as fixed by the Assessor of Railways: Find that the amount of assessment due to the pursuers by the defenders and appellants for the period in question is £420, 6s. 10½d., with interest thereon at the rate of 2½ per cent. per annum from 15th October 1904 till payment, for which decern against defenders: Find the defenders and appellants entitled to expenses both in the Sheriff Court and in this Court, and remit," &c.

Counsel for the Pursuers and Respondents—Scott Dickson, K.C.—A. R. Brown. Agents—Alex. Morison & Company, W.S.

Counsel for the Defenders and Appellants—Cooper, K.C.—Hon. W. Watson. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, July 19.

FIRST DIVISION.

[Lord Ardwall, Ordinary.

MURRAY'S TRUSTEES *v.* TRUSTEES OF ST MARGARET'S CONVENT AND ANOTHER.

Superior and Vassal — Restriction on Building — Feuars with a Common Superior—Reference to Feuing Plan—Mutuality of Rights and Obligations—Enforcement of Restriction by One Feuar against Another.

A proprietor feued out to two feuars two different portions of his estate, placing them under similar building restrictions, and referring to a plan of the estate, but in the first charter it was stated that "the superiors shall not be bound by the plan in feuing out the remaining portion of the estate further than by a general conformity thereto," and in the second that "the feuing plan is referred to for no other