

against, and remitted to the Lord Ordinary to allow the parties before answer a proof of their averments.

Counsel for the Pursuer—Aitken. Agents
—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defender—Abel. Agents
—Morton, Smart, & Macdonald, W.S.

Thursday, March 12.

SECOND DIVISION.

[Lord Low, Ordinary.]

WESTERN DISTRICT COMMITTEE OF COUNTY COUNCIL OF STIRLING v. NORTH BRITISH RAILWAY COM- PANY.

Railway—Statutory Powers—Expiration of Time for Completion of Railway—Railway Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), sec. 16—Work “Necessary for Use of Line”—Doubling Rails at Level-Crossing on Requisition of Board of Trade.

The Railway Clauses Consolidation (Scotland) Act 1845, by section 16, provides *inter alia* that a railway company “may from time to time alter, repair, or discontinue the before-mentioned works, or any of them, and substitute others in their stead; and they may do all other acts necessary for making, maintaining, altering, or repairing and using the railway.”

A railway company was authorised by their special Act to carry the railway across and on the level of a certain public road. The special Act further provided that after the expiration of five years from the passing of the Act the powers granted to the railway company should cease to be exercised except as to so much of the railway as should then be completed. More than five years after that date the Board of Trade required the company to interlock the signals at a station immediately to the west of the level-crossing in question. When the arrangements for this purpose were examined by the Board of Trade Inspector, he refused to pass them unless a loop-line at the station was prolonged eastwards and across the level-crossing. The company accordingly made a new loop-line, with the result that the line at the level-crossing was doubled. *Held* that they were entitled to do so, as the doubling of the line at the point in question was “an act necessary for using the railway” within the meaning of the Railway Clauses Consolidation (Scotland) Act 1845, section 16.

Opinion (per Lord Trayner) that the laying of a second line of rails at the place in question was a “substitution” of a double for a single line, and as a “substitution” warranted by the same section.

The Forth and Clyde Junction Railway was constructed under the powers of the Forth and Clyde Junction Railway Act 1853. Section 32 of that Act provides as follows:—“It shall be lawful for the company, in constructing the railway hereby authorised, to carry the same across and on the level of the following roads,” including, *inter alia*, the road from Buchlyvie to Gartmore and Aberfoyle. The railway was carried across that road accordingly at a point a little westward of Buchlyvie Station. The company were authorised to acquire, and under their compulsory powers did acquire, sufficient land to lay a double line of railway, and within the gates at the level-crossing sufficient space for a double line was enclosed, but in fact only a single line was laid.

The Forth and Clyde Junction Railway Act 1853, section 37, provides as follows:—“The railway hereby authorised shall be completed within five years from the passing of this Act, and on the expiration of such period the powers by this Act, or the Acts incorporated herewith, granted to the company for executing the railway, or otherwise in relation thereto, shall cease to be exercised, except as to so much of the railway as shall then be completed.”

By an agreement concluded in 1871 between the Forth and Clyde Junction Railway Company and the North British Railway Company, the whole undertaking of the former company was leased to the latter for a period of thirty years. In 1875 the agreement was extended to a period of fifty years from 31st July 1875. Under these agreements the North British Railway Company was vested in and was to exercise all the powers of the Forth and Clyde Junction Railway Company, and in particular all works connected with the maintenance, improvement, or alteration of the line were to be executed by the North British Railway Company, who were also taken bound to perform every statutory or other obligation proper to be performed in respect of the working of the railway.

In November 1890 the Board of Trade, in exercise of powers conferred on it by the Regulation of Railways Act 1889, called upon the defenders, as the working company under the said agreements, to interlock (so far as not then done) the whole stations upon their system for signalling purposes. The defenders in obedience to this order carried through the interlocking of the signals of Buchlyvie Station. After completion of the work, the Board of Trade sent Major Marindin, who was one of their inspectors, to inspect it, with a view to his reporting to the Board whether the interlocking had been satisfactorily carried out, and could be passed by the Board. His inspection took place on 15th February 1894. Buchlyvie Station had at the time of Major Marindin's inspection only one platform, situated on the north side of the main line. A loop-line branched off from the main line immediately to the west of the level-crossing, and ran westwards alongside of the main line opposite the station platform, returning back into the

main line beyond it. This loop-line, however, had no platform in connection with it. When Major Marindin made his inspection of the interlocking arrangements at Buchlyvie he intimated to the defenders that he would not pass them unless a platform was erected for the loop-line also, and unless the loop-line itself was carried further to the east and across the level-crossing."

The Western District Committee of the County Council of the county of Stirling, who had charge of the management and maintenance of the road from Buchlyvie to Gartmore and Aberfoyle where it was crossed by the railway, learning that the line at that point was to be doubled, petitioned the Board of Trade to prevent the Railway Company from doubling the line at the level-crossing, submitting that the time had arrived when the Board of Trade ought, in terms of the Forth and Clyde Junction Railway Act 1853, section 34, to require a bridge to be substituted for the level-crossing. That section provides as follows—"It shall be lawful for the Lords of the said Committee (*i.e.*, the Board of Trade), if it shall appear to them to be necessary for the public safety, at any time either before or after the railway hereby authorised to be carried across the said roads on the level thereof shall have been completed and opened for public traffic, to require the company, within such time as the said Lords shall direct, and at the expense of the company, to carry any of the said roads either over or under the railway by means of a bridge or arch, in lieu of crossing the same on the level, or to execute such other works as under the circumstances of the case shall appear to the said Lords best adapted for removing or diminishing the danger arising from such level-crossings.

They also instructed the County Clerk to address a letter to the Board of Trade asking them to suspend or recal whatever requirement or suggestion the Board might have made necessitating the doubling of the line at the point in question until the questions involved could be deliberately considered. In consequence of these representations an inquiry was held at Buchlyvie on 30th May 1895 by Major Marindin.

On 16th June 1895 the Railway Company constructed the new loop line, laying a second line of rails over the level-crossing and altering the position of the gates and gate-posts at each side of the crossing.

The District Committee thereupon raised the present action. The summons concluded for declarator (first) that the defenders were not entitled to encroach on the *solum* of the road at the level-crossing in question by laying rails upon it or otherwise beyond the line of the gates which existed at each side of the level-crossing previous to the operations of the defenders above described, and (second) that these operations were illegal, (third) for decree ordaining the defenders to take down the new gates, and to remove the rails newly laid, and (fourth) for interdict against the continuance of the encroachments complained of.

The pursuers pleaded—"The operations complained of being illegal and unwarrantable, decree of declarator, removal and interdict ought to be pronounced, with expenses, in terms of the conclusions of the summons."

The defenders pleaded, *inter alia*—" (4) The operations complained of having been carried out by the defenders to satisfy the requirements of the Board of Trade, the pursuers have no right to insist in the conclusions of the summons, and the defenders should be assolizied."

The Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), section 16, provides—"Subject to the provisions and restrictions in this and the special Act and any Act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith hereinafter mentioned, to execute any of the following works—that is to say . . . They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper. They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and they may do all other acts necessary for making, maintaining, altering, or repairing and using the railway."

The Railways Clauses Act 1863 (26 and 27 Vict. cap. 92) after providing (section 7) practically in terms of section 34 of the Forth and Clyde Junction Railway Act 1853, section 34, quoted above, provides by section 8 as follows—"If the Board of Trade certifies that the public safety requires that additional lands be taken by the company for the purpose of the work directed by the Board of Trade to be executed, the company may, subject to the provisions of the Lands Clauses Consolidation Act 1845 or the Lands Clauses Consolidation (Scotland) Act 1845, as the case may require, enter upon, take, and use all or any part of the lands specified in the certificate of the Board of Trade as being necessary for the purpose of the work, and the Board of Trade before issuing the certificate shall cause at least three months' notice to be given to any person who may be entitled to claim, under the last-mentioned Acts or otherwise, compensation in respect of the taking of such lands or in respect of such work."

The Railways Construction Facilities Act 1864 (27 and 28 Vict. cap 121), which enables, *inter alia*, new works connected with existing railways to be executed under authority of a certificate from the Board of Trade without obtaining a private Act of Parliament, when landowners and others beneficially interested are consenting parties, provides, section 5—"Notwithstanding anything in this Act it shall not be necessary for the promoters before applying under this Act for authority to make the railway to enter into any contract with respect to any part of a turnpike road or public highway intended to be taken or

used, or to be diverted or otherwise interfered with, for the purposes of the railway, but the Board of Trade, before they settle a draft of such a certificate as hereinafter provided for, shall be satisfied that due provision is made for the interests of the trustees or other persons having the management of every such road or highway, and for the safety and convenience of the public in relation thereto." Section 6—“(1) They (the promoters) shall apply to the Board of Trade for a certificate under this Act. (2) They shall deposit maps, plans, sections, and books of reference, and an estimate of the expense of the construction of the railway, and lodge a draft of the certificate as proposed by them according to the general rules under this Act. (3) They shall publish notice of the application according to such general rules.” Section 8—“The Board of Trade before settling the draft of a certificate, shall take into consideration any representation made to them, and shall duly inquire into the merits of any objection brought before them respecting the application.” Section 54—“All the provisions of this Act which relate to the making of a railway shall extend and apply, *mutatis mutandis*, to the making or executing of any work connected with or for the purposes of a railway (as distinguished from the construction of a railway).” The Act also provides, sections 14, 15, and 16, for the draft certificate being laid before Parliament.

On 24th January 1896 the Lord Ordinary (Low) pronounced the following interlocutor:—“Finds that the defenders exceeded their powers and acted illegally in laying the line of rails complained of across the county road or highway described in the summons: Therefore repels the defences, and to the extent and effect of the above finding, finds, decerns, and declares in terms of the declaratory conclusions of the summons: Appoints the cause to be enrolled for further procedure: Finds the pursuers entitled to expenses,” &c.

Opinion.—[After stating the facts]—“It may be that if the defenders had not carried out Major Marindin's suggestions, the Board of Trade would have refused to pass the interlocking arrangements, and the defenders would thereby have been compelled to do whatever was necessary to enable them to carry the loop line over the road. I do not, however, think that the alteration of the loop line can be regarded as having been done under an order of the Board of Trade, and the decision of the case therefore appears to me to depend upon the power of a railway company to lay an additional line over a level-crossing after the line has been opened for traffic and the powers conferred by the special Act have expired.

“A railway company cannot carry their line across a public road on the level unless their special Act gives them power to do so. If, however, power to cross a road upon the level is conferred, the company do not require to purchase any part of the road under their compulsory powers. They

simply carry the line across the road, subject to the obligations imposed upon them by the Railways Clauses Consolidation Act 1845 and other general railway statutes in regard to gates, fences, and so forth.

“The argument of the defenders was that by the power given to them in the special Act they were authorised to take across the road any railway which they were entitled to construct upon the lands acquired by them upon each side of the road.

“As they have lands sufficient for the purpose, they contended that they are entitled now to lay a double line upon these lands, and that if they have power to do so, they have also power to use the right of transit given to them, and to carry the line across the road.

“It seems to me that the question mainly depends upon the construction of the 32nd section of the special Act, which gives the company power to cross certain roads on the level, and the 37th section, which fixes the period for the completion of the works.

[His Lordship quoted the sections.]

“I do not doubt that notwithstanding the latter section there were many works which the company could execute after the expiry of the five years. I think that they could execute any works for which they did not require statutory powers, but works for which they required statutory powers they could no longer execute.

“Now, in this case the company required statutory power to make their railway across the road in question. That power was given to them by the 32nd section, which authorised them to cross the road ‘in constructing the railway hereby authorised.’ These words are, I think, important. The power is limited to crossing the road ‘in constructing the railway.’ These words appear to me to refer to the original construction of the railway, and not to additional works executed after its completion. Further, the power was a special power granted to the company by the Act, without which it is conceded that they could not have carried the railway across the road on the level. But the 37th section provides that after five years the powers granted to the company ‘for executing the railway shall cease to be exercised.’ A power to cross a road on the level in constructing the railway seems to me to be a power ‘for executing the railway,’ which after five years the company could no longer exercise.

“It is true that there is a saving clause in the 37th section—‘except as to so much of the railway as shall then be completed’—but I think that that is only intended to make it clear that nothing done during the five years in the exercise of special powers shall be challengeable after the expiry of the powers.

“In this case the saving clause appears to me to apply to the single line originally laid down. The power to cross the road expired except as to that line.

“That view seems to me to be consistent with all the statutory provisions of the general Acts in regard to level-crossings.

All the provisions in regard to the approaches, fences, and gates at level-crossings appear to refer to the time when the railway is first made across the road, and there is not a single enactment, so far as I am aware, which contemplates the laying of an additional line across a road by a company at their own hand after the railway has been completed and opened.

"The defenders contended that it could not have been intended that a railway company should not have power, after the period for completion of the line had expired, to construct upon their own land a loop line requisite for the proper conduct of traffic, because it would cross a road which the Legislature had authorised them to cross, unless they went back to Parliament and got a new Act. Now, I do not see any difference in principle between a company carrying a loop line across one road, and doubling their line all along, with the result of doubling the number of rails over every road crossed by the railway, and in both cases I think that, assuming the special Act to be in the same terms as in this case, the company would, prior to 1864, have required to get special powers from Parliament. Now, however, I rather think that the defenders could construct a loop line by obtaining a certificate from the Board of Trade, under the Railways Construction Facilities Act 1864. The main object of that Act is to enable railway companies to make branch lines without a special Act when they can acquire all the land necessary by agreement. But by the 54th section the provisions of the Act which relate to the making of a railway are extended and apply to 'the making or executing of any work connected with or for the purposes of a railway (as distinguished from the construction of a railway).

[His Lordship then quoted the fifth section.]

"Now, if the defenders, in order to make the loop line, had required to purchase land, and had come to an agreement with the owners of the land, I think that it is clear that they could have applied for a certificate from the Board of Trade for the construction of the loop line and the carrying it across the road, and I do not think that the fact that they have the land, and only require authority to carry the line across the road, would debar the defenders from taking advantage of the Act. I am inclined to think that the case would be within the scope of the Act, and that the defenders would be entitled to apply to the Board of Trade for a certificate authorising them to cross the road.

"The defenders further contended that the pursuers had no title to sue as they are not proprietors of the *solum* of the road. I do not think that it is of any consequence that the pursuers are not the proprietors of the *solum* of the road. It is, in my opinion, sufficient that they have right to prevent any unauthorised or illegal encroachment upon, or obstruction of the road. The laying of a line of rails across the road for the use of engines and trains

is undoubtedly an obstruction to which, if done without lawful authority, the pursuers are, in my opinion, entitled to object, and I do not think that it is necessary to consider whether or to what extent the public would suffer greater inconvenience or danger from two lines crossing the road than they were exposed to when there was only one line."

The defenders reclaimed, and argued—The Railway Company were entitled, under sec. 32 of their special Act, to cross this road. They were also entitled, without applying for any special authority to that effect, to do acts necessary for using the line—Railways Clauses Act 1845, sec. 16; and the operation of that clause was not limited to the time within which the powers given in the special Act must be exercised—*Emsley v. North-Eastern Railway*, February 20 [1896], 1 Ch. 418—much less to the time during which the railway was being constructed. The pursuers' contention to that effect, based on *The Queen v. Wycombe Railway Company*, January 26, 1867, L.R., 2. Q.B. 310; and *Pugh v. Golden Valley Railway Company*, July 2, 1880, 15 Ch. D. 330, was negatived in *Emsley v. North-Eastern Railway Company, cit.* The company would have been entitled to substitute a double line for a single one throughout the whole line, for that would have been a "substitution" under section 16, *cit.*, but in any view they were entitled to double the line at a particular point, when such doubling of the line was necessary in the opinion of the Board of Trade Inspector. There was no necessity in this case for a certificate under the Railways Clauses Act 1863, sections 7 and 8, which were the only enactments as to certificates having any bearing on the present case, because the company already possessed all the land required. A certificate under the Railways Construction Facilities Act 1864 was not necessary, for the company had all the necessary powers in virtue of their special Act, and section 16 of the Railways Clauses Act 1845.

Argued for the pursuers—(1) Section 16 of the Railways Clauses Act 1845 was superseded as regards this railway by section 37 of the special Act—see *Glasgow District Subway Company v. Robertson's Trustees*, June 26, 1895, 22 R. 790. But (2) even if this were not so, section 16 only applied to the case of works which were "necessary" and "necessary during construction," and "necessary" meant physically necessary, not merely less expensive or more convenient—*The Queen v. Wycomb Railway Company*, and *Pugh v. Golden Valley Railway Company, cit.* It was not necessary in this sense to double the line at the level-crossing. The case of *Emsley, cit.*, was a case of "substitution" and had no application here, for it was an abuse of language to talk of "substituting" a double line for a single one, and that was what was done as far as the pursuers were concerned, but, moreover, the decision in that case was based on the special Act of 1891, and the observations upon the effect of section 16 of the Act of 1845 were *obiter*. (2) The defenders' case depended

entirely upon the allegation that they had been ordered to do what they had done by the Board of Trade, but no such order had been produced. (3) If Major Marindin said that the operation was necessary, what must have been intended was that the company should apply to the Board of Trade under the Railways Clauses Act 1863, or the Railways Construction Facilities Act 1864, for a certificate, and if they had done so all parties would have had an opportunity of being heard before the certificate was finally granted, but instead of applying for a certificate the Railway Company carried out the work at their own hand without any further procedure or authority, and this was entirely unwarranted and illegal.

At advising—

LORD JUSTICE-CLERK—The North British Railway Company, which has come in place of the Forth and Clyde Railway Company, as owners of the railway line between Stirling and Balloch, has recently executed works at Buchlyvie Station to fulfil the Government regulations as regards safety by the establishment of block and interlocking signals. When these works had been carried out, and were submitted for approval to the Board of Trade Inspector, he declined to pass them as being safe and satisfactory for the working of the line unless the company extended a loop-line at the station further eastwards than was then the case. There being at the east end of the station a level-crossing across a public road, the extension of the loop-line could not be made without the rails of the loop being laid across the road. The company already possessed land of sufficient breadth on both sides of the road for making this extended loop, and had, by their gates protecting the old level-crossing, shut in, ever since the line was made, the spaces on which the rails of the extended loop-line would be placed. The Railway Company proceeded to make the extended loop, and the pursuers have raised this action of declarator and interdict, and concluding for removal of the rails so laid.

The question is whether the Railway Company had power to do this piece of work. The answer must depend upon the construction to be given to statutory enactments, as, of course, the Railway Company could have no power to interfere with a public road unless it was given by Act of Parliament. In the statute by which the line was authorised, power was given to take the line across this road on the level, and accordingly the road has there crossed by level-crossing since the construction. But although their Act authorised a double line, and the works were constructed for a double line, only one line of rails was laid down. It is maintained by the pursuers that the power to lay down another line has been lost, as the 37th section of the Act authorising the construction declares that the powers of the Act shall cease to be exercised at the end of five years, "except as to so much of the railway as shall then be completed." I cannot say that it is to me at all clear that this restriction applies

to the case in question, even as regards the laying down of a second line of rails, where that may become necessary for the working of the traffic on a line the works for which have been completed for double running.

The power which under the Railway Clauses Act is given to railway companies "from time to time to alter," and to do all acts necessary for using the railway, might, I think, well apply to the use of two lines on a railway constructed for two lines, but used at first when traffic was small with only one line. To lay down additional rails as they may be required on the lands acquired, seems to me not to be a power taken from them at the end of the five years. But I do not express any opinion upon that matter, as I think this case can be disposed of without giving any decision upon it. The true question here is whether what the Railway Company have done is a work they are entitled to do after the five years for construction have expired. Now, that they could have done this work on lands belonging to themselves had there been no public road crossing them, does not, I think, admit of doubt. If Buchlyvie Station had been at a distance from any level-crossing, the making of this loop would have been a work incidental to the working of the line in accordance with Government requirements, and therefore a work "necessary" in the sense of section 16 of the Railways Clauses Act; and if "necessary" in the sense of section 16, then plainly not struck at by the cessation of powers clause in the special Act. It is not easy to imagine a situation to which the words "act necessary" could more distinctly apply than to the fulfilment of an authoritative order of a Government department for the carrying out of rules fixed by public statute passed subsequently to the making of the line. The Railway Company in this case are not doing a work they desire to do at all, but a work which is forced upon them by a Government inspector under sanction that until it has been done, other works ordered by him cannot be passed as sufficiently done to fulfil the requirements of this department under their statutory powers. Now, if the work could not be said to be beyond the powers of the company if executed entirely within the lands acquired by them for their line, can it be said to be beyond their powers when it is executed, not on their own land, but on a road which their statute gave them the power to use as part of their line, and within the limits of the line of breadth of the land allowed to be acquired for their line on either side of the road. I am unable so to hold. The company having right to use this portion of the road by crossing it with their line, are entitled to such use within the limits of the lines shown on their parliamentary plans as the "use of the railway" in the words of section 16 makes necessary. And the responsible official, whose duty it is to regulate certain matters, lays down as "necessary" to the future use of the line the extension of a loop, which as it happens cannot be completed without its being

carried across the road. It would be strange if a line necessary for the use of the railway could not be carried across a road at which a level-crossing had been authorised in the construction of the railway. If a level-crossing is allowed by Act of Parliament, can there be any reason why the words "necessary use" of the line should not apply to that place as much as to any other part of the line? I do not see how there can be.

Of course, there may be "acts necessary" to the use of a line, which, if carried out at a level-crossing, might make such a change in the conditions that good reason might arise for coming to the conclusion that a level-crossing should no longer be suffered to exist at that place. And it is quite possible that this may prove to be the case in the present instance. But such a contingency is amply provided for by the law. Level-crossings are permitted by the Legislature when the existing circumstances at the time of the application for authority to make a line seem to make it safe and expedient to allow the line to cross roads in that manner. But if circumstances change, if traffic increases, or high speed traffic is developed, or any new circumstances arise which alter the case, then it is in the power of such a body as the pursuers in this case to apply to the Board of Trade to have order made on the Railway Company to substitute a bridge for the level-crossing. So in this case, if the establishment of this loop has any such effects as will justify an application for an order to have a bridge constructed, that order can be obtained. Meantime, the only question is, whether the pursuers are entitled to the declarator and interdict which they ask for on the ground that the Railway Company have no power to execute the work declared necessary by the Board of Trade. I think that they are not, and that the interlocutor of the Lord Ordinary should be recalled, and the action dismissed.

LORD YOUNG concurred.

LORD TRAYNER—I agree. In dealing with this case I start with the consideration that what the defenders have done has been practically in obedience to an order by the Board of Trade. The Board of Trade in exercise of a statutory power called upon the defenders to interlock the whole stations upon their system for signalling purposes. The defenders having complied with this order at Buchlyvie Station, the officer of the Board of Trade refused to approve of or pass as sufficient what had there been done, unless the defenders executed the works now complained of. These works were accordingly carried out. In these circumstances it is presumable that the works complained of were necessary in the public interest, and that no public interest has been injured by their execution. The question remains, however, whether the works so executed were legally within the defenders' power. The complainers maintain that the respondent's operations were illegal and unwarrantable,

notwithstanding the circumstances under which they were carried out, and whether they were so or not is the question before us. The Lord Ordinary has held that the defenders, in the works complained of, "exceeded their powers and acted illegally." I cannot concur in that opinion.

The railway was constructed under statutory authority, and the private Act which authorised it incorporated the Railway Clauses Act of 1845. [*His Lordship then read the portions of section 16 quoted above.*] The section then provides for compensation being made for any damage that such works may occasion.

It appears to me that the operations complained of come within the authority I have just quoted. At the original construction of the line at Buchlyvie Station only one line was carried across the public road on the level. Another line has now been added, but I think that is within the fair meaning of the statute as a substitution—the substitution, namely, of a double for a single line, just as much as the erection of the increased parcel office for a smaller one was held to be a substitution in the case of *Emsley*. But supposing it to be doubtful that the work complained of is a substitution, it does not appear to me to be doubtful that it is a work and convenience similar to those authorised by the before-quoted section of the Act of 1845. Nor can it be doubted that the new accommodation work (for that is its character) is "an act necessary . . . for using the railway," for the Board of Trade has required it. I would be slow to interfere with what the Railway Company has done, seeing that the work has been ordered and executed in the public interest; and that the public interest has not and cannot suffer thereby. That the public interest—that is, the public safety and convenience—has not been injured appears from the fact that the two lines now laid across the road on the level are fenced and guarded just as the single line formerly was, and practically the public road has not been diminished, or made less serviceable by the laying of the second line. That such public interest will not suffer in the future is clear enough from this, that the Board of Trade under the Act of 1863 can order the defenders to build a bridge under or over their level-crossing if convinced that the public interest requires the adoption of such a measure. The pursuers, in fact, seem to be using this action as a compulsitor upon the defenders to build such a bridge. But no action is necessary for that purpose. They have only to satisfy the Board of Trade of the necessity or propriety of such a bridge in order to get it.

LORD RUTHERFURD CLARK was absent.

The Court recalled the interlocutor reclaimed against and assoilzied the defenders from the conclusions of the action with expenses.

Counsel for the Pursuers—Dickson—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for the Defenders—Balfour, Q.C. —F. T. Cooper. Agent—James Watson, S.S.C.