Wednesday, March 2.

SECOND DIVISION.

[Sheriff Court at Hamilton.

WARNOCK *v.* THE GLASGOW IRON AND STEEL COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *Second Schedule* (14) (*c*)—*Stated Case on Appeal — Question of Law — Question whether Death Resulted from or was Accelerated by Accident is Question not of Law but of Fact—Expenses.*

In a stated case on appeal in an arbitration under the Workmen's Compensation Act 1897 the following question was submitted for the opinion of the Court:—"Whether in the circumstances stated the death of the deceased J. W. resulted from or was accelerated by an accident within the meaning of the Workmen's Compensation Act 1897."

Held that the question was not a question of law but one of fact, and the appeal *dismissed* with expenses against the appellant.

This was an appeal from the decision of the Sheriff-Substitute at Hamilton (Thomson) in an arbitration under the Workmen's Compensation Act 1897, in which Mrs Margaret Graham or Warnock, widow of the deceased John Warnock, claimed compensation for the death of her husband from the Glasgow Iron and Steel Company, Limited.

The claimant obtained a Case, in which the Sheriff-Substitute stated that on 9th May 1903 the deceased met with an accident occurring out of and in the course of his employment by a stone falling from the roof of the pit where he was working and injuring the great toe of his right foot; that he had to leave his work on account of the injury; that he suffered much pain and depression of spirits so that his physical condition was lowered by the accident and never entirely recovered; that he never made any claim for compensation, and insisted on going back to work on 3rd June; that he worked regularly till 17th June, when he was taken ill in the pit and had to go home; that he remained at home till 27th June, when he had a stroke of paralysis, from which he died on 29th June, aged 79.

In these circumstances the Sheriff-Substitute found "that it was not proved that death resulted from or was accelerated by the accident, and that the applicant was not entitled to compensation under the Workmen's Compensation Act 1897.

"The question of law for the opinion of Court of Session is—Whether in the circumstances stated the death of the deceased John Warnock resulted from or was accelerated by an accident within the meaning of the Workmen's Compensation Act 1897."

Argued for the appellant—The death resulted from or at least was accelerated by the accident. [LORD TRAYNER — Is not that a question of fact which has been decided against you by the Sheriff-Substitute?] It was no doubt largely a question of fact, but in recent cases questions involving an examination of facts like the present had been treated as questions of law—*Golder* v. *Caledonian Railway Company*, November 14, 1902, 5 F. 123, 40 S.L.R. 89; *Fenton* v. *J. Thorley & Company, Limited* [1903], App. Cas. 443.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK—The question submitted in this case for our judgment is not one of law. The question whether the death resulted from or was accelerated by an accident is a pure question of fact.

LORD TRAYNER and LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court dismissed the appeal and found the appellant liable in expenses.

Counsel for the Claimant and Appellant—G. Watt, K.C.—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Salvesen, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Thursday, March 3.

FIRST DIVISION.

[Railway and Canal Commissioners.

CALEDONIAN RAILWAY COMPANY *v.* NORTH BRITISH RAILWAY COMPANY.

Railway—Local Traffic—"Traffic Arising and Terminating on the Railways of the Company"—Caledonian and Scottish Central Railways Amalgamation Act 1865 (28 *and* 29 *Vict. cap. cclxxxvii*), *sec.* 73, 74, *and* 75—*Caledonian and Scottish North Eastern Railways Amalgamation Act* 1866 (29 *and* 30 *Vict. cap. cccl.*), *sec.* 108.

By the Caledonian and Scottish Central Railways Amalgamation Act 1865 the Caledonian Railway Company was bound to send goods received at their stations, and falling within the category of "Scottish East Coast Traffic" as defined by the Act, to their destination by the route prescribed by the sender.

By the Caledonian and Scottish North Eastern Railways Amalgamation Act 1866 it was provided (sec. 108) that the North British Railway Company should not be entitled "to carry or interfere with any traffic arising and terminating on the railways" of the Caledonian.

The Caledonian claimed the right to carry coal consigned at Bannockburn (on their system) for Aberdeen (also on their system) by the Caledonian line

via Perth, although it was routed by the sender to go by the North British route via Dundee. They did not dispute that such traffic was "Scottish East Coast traffic," within the meaning of the Act of 1865, but maintained that it was "traffic arising and terminating" on their line, within the meaning of the Act of 1866.

Held (following opinions in *Distington Iron Company, Limited* v. *London and North Western Railway Company*, 6 R. & C. Cases 108) that the expression "traffic arising and terminating" on the lines of a company meant traffic which was not directed to pass over the line of any other company; and consequently that the traffic in question must be sent by the route indicated by the sender.

This was an appeal from an order of the Railway and Canal Commissioners sitting in place of the standing arbitrator under the Caledonian and Scottish Central Railways Amalgamation Act 1865 and the Caledonian and Scottish North Eastern Railways Amalgamation Act 1866, at the instance of the Caledonian Railway Company, defenders and appellants, against the North British Railway Company, applicants and respondents.

The Caledonian and Scottish Central Railways Amalgamation Act 1865 and the Caledonian and Scottish North Eastern Railways Amalgamation Act 1866, amalgamated respectively the Scottish Central Railway and the Scottish North Eastern Railway with the Caledonian Railway.

The Act of 1865, sec. 73, defined Scottish East Coast traffic as meaning "traffic of every description passing or destined or directed to pass to, from, over, or beyond the railways which previously to the commencement of this Act formed the undertaking of the Scottish Central Railway Company (and which are hereinafter called the Scottish Central Lines) or any part thereof, from, to, over, or beyond the railways forming the undertaking of the North British Railway Company and the Edinburgh and Glasgow Railway Company respectively or any part thereof, which companies are hereinafter called the Scottish East Coast Companies."

Section 74 provided for there being given to the Scottish East Coast Companies in respect of Scottish East Coast traffic "all such facilities as are usual or useful for the convenient working or development of railway traffic including" . . . and section 75 enacted that . . . "all traffic specially consigned by the public as to be conveyed by the Scottish East Coast Companies route shall be sent by such route." . . .

The Act of 1866, sec. 106, conferred on the North British Railway Company, for the purpose of conveying Scottish East Coast traffic as defined by sec. 99 (quoted in the Lord President's opinion), running powers over the Scottish North Eastern lines. Section 108 provided—"Nothing in this Act contained shall authorize the North British Railway Company to carry or interfere with any traffic arising and terminating on the railways of the Company (*i.e.*, the Caledonian Railway Company after the amalgamation), with the exception that in the exercise by the North British Railway Company of the running powers hereinbefore contained it shall be lawful for them to carry by two through passenger trains each way daily between Aberdeen and the North British Railway local passenger and coaching traffic between the following stations, viz.:—Aberdeen, Stonehaven, Bridge of Dun, Forfar, Couper-Angus, Perth, Arbroath, Broughty, and Dundee."

Coal traffic from Bannockburn Colliery on the Scottish Central line, four miles south of Stirling, to Aberdeen on the Scottish North Eastern line, was specially routed and consigned by the senders *via* Stirling and the North British route by the Tay Bridge. The Caledonian Company disregarded the senders' routing, and persisted in sending the traffic by its own route *via* Perth, maintaining that it was under no obligation to forward the traffic by the North British Company's route. The North British Company maintained the contrary, and applied to the Court of the Railway and Canal Commissioners for an order determining this difference.

On 13th December 1902 that Court issued the following order:—". . . Now therefore, having heard counsel for each of the said Railway Companies, this Court doth declare that the North British Railway Company are entitled to have coal traffic from Bannockburn Colliery to Aberdeen, which has been specially consigned by the public as to be carried *via* Stirling and the Tay Bridge, handed over to them at Stirling by the Caledonian Railway Company for conveyance by that route."

LORD STORMONTH-DARLING—[*After reciting the provisions of the statutes*]—"Founding upon these provisions, the applicants say that the traffic from Bannockburn to Aberdeen falls under the description of "Scottish East Coast Traffic," as defined in section 73. Clearly I think it does. It is traffic directed to pass from a place on the "Scottish Central Lines" to a place beyond the railways of one of the "Scottish East Coast Companies." Indeed the respondents do not dispute that as matters stood in 1865 it fell within the definition. The system of the North British Company did not then extend further north than Dundee, just as the system of the Caledonian Company did not then extend further north than Perth, but if any consignor had desired that his coal should go to Aberdeen by Dundee instead of by Perth, the respondents admit that his special consignation must have been obeyed. They say, however, that the situation has been entirely changed by subsequent events, especially by the construction of the Tay Bridge, and that the reason for safeguarding the interests of the North British Company has entirely disappeared now that they are in possession of a main through route of their own. They point to the language of section 84 of the Act of 1865, which provides for the

appointment of a standing arbitrator to settle all disputes about the running powers and facilities granted by the Act, as recognising that regard may be had to the 'spirit and intention' of these provisions. I agree that the situation has been greatly altered by the construction of new lines and by changes in the ownership of old lines since 1865. But I do not find in the Act anything to indicate that the railways there mentioned are limited to the lines existing at its date. On the contrary, it speaks of them in the most general terms as the railways of the various companies; and section 84 imposes on the standing arbitrator (whose functions we are here called upon to discharge) the duty of construing its provisions in the ordinary way, that is to say, by attaching a natural meaning to the language which it employs. It is only when the section goes on to deal with the mode of complying with the provisions of the Act that it brings in a reference to their 'spirit and intention.' Accordingly I do not think there can be much doubt that the applicants are right in their construction of the Act of 1865.

"But then the respondents say—and this is really their main argument—that even if they are wrong about the Act of 1865, the Caledonian and Scottish North-Eastern Railways Amalgamation Act, which became law on 1st August 1866, completely altered the rights of parties with respect to the traffic in question. The leading purpose of that Act was to transfer to the respondents the line from Perth to Aberdeen, with its accessories, while giving to the applicants running powers over it for the purpose of conveying 'Scottish East Coast traffic,' and there was inserted in section 99 for the purposes of the Act a new definition of 'Scottish East Coast traffic.' Aberdeen thus became by virtue of the Act a station belonging to the respondents; and by section 108 it was provided that nothing contained in the Act should authorise the North British Company to carry or interfere with any traffic arising and terminating on the railways of the Caledonian Company, with certain exceptions which do not affect the present question. The respondents maintain that by these provisions traffic from Bannockburn to Aberdeen was converted from being 'Scottish East Coast traffic' to being 'local traffic' in the sense of the rubric of section 108, and as such was not to be interfered with by the applicants, even although it might have been interfered with before.

"Now this, I think, would be rather a strange result of a subsequent Act intended mainly to enlarge the undertaking of the respondents, because one would not expect to find in such an Act anything which would diminish the previously existing rights of a rival company. But really the matter is placed beyond doubt by the opening words of section 108, taken in connection with section 135. The latter section provides that nothing contained in the Act of 1866 should prejudice or affect any rights, powers, or privileges conferred by the Act of 1865 upon, amongst others, the North British Company. Accordingly, if coal directed to pass from Bannockburn to Aberdeen by the North British Railway was 'Scottish East Coast traffic' from 1st August 1865 to 1st August 1866, it is, for the purposes of the Act of 1865 'Scottish East Coast traffic' still; and if the applicants had a right to demand that coal so consigned should be handed over to them for transmission by their then existing lines, they have the same right with reference to their lines as existing now. Even without the aid to be derived from section 135, I should be prepared to hold that section 108 takes away no right which they had under the Act of 1865. Section 108 does not say that under no circumstances shall they carry or interfere with traffic arising and terminating on the railways of the respondents, but only that nothing contained in the Act of 1866 shall authorise them to do so. Now, they derive their authority to carry this particular traffic not from the Act of 1866 but from the Act of 1865.

"The most that can be said of section 108 in favour of the respondents is that, possibly, it may disable the applicants from using, for the purposes of this traffic, any of the powers conferred upon them by the Act of 1866, including the power of carrying it by trains of their own over the portion of the old Scottish North-Eastern system from Kinnaber Junction to Aberdeen. It was suggested at the debate that in that case there might be practical difficulties in disposing of this traffic at Kinnaber Junction. But with these we are not called upon under this application to deal—the materials for dealing with it are not before us. Possibly the difficulties, if they exist, may be overcome by agreement. If not, the applicants may be entitled to have the question of facilities determined by arbitration.

"I propose, therefore, that we should find, dealing with the only question which is properly before us, that the applicants are entitled to have coal traffic from Bannockburn Colliery to Aberdeen, which has been specially consigned *via* Stirling and the Tay Bridge, handed over to them at Stirling by the respondents for conveyance by that route."

SIR FREDERICK PEEL—The matter in difference in this case has reference to consignments of coal sent by the general public from Bannockburn on the Caledoniau Company's Scottish Central Railway to Aberdeen, on the same Company's North-Eastern Railway, and which the senders order to be conveyed *via* Stirling and the North British route by Tay Bridge. Traffic going by that route would come upon the North British system at Stirling, but the Caledonian decline to transfer it, and carry it instead *via* Perth and their own route to Aberdeen. The contention of the North British, who are the applicants, is that the traffic in question is Scottish East Coast traffic as defined by the Caledonian and Scottish Central Railways Amalgamation Act 1865, and that when Scottish East

Coast traffic is, as in this case, specially consigned by the public as to be conveyed by their route, the Act of 1865 gives them the right to have it so sent. I am in favour of their view on both these points. As to the first, section 73 of the Act of 1865 defines 'Scottish East Coast traffic' to mean traffic of every description passing or directed to pass to, from, over, or beyond the Scottish Central lines or any part thereof, from, to, over. or beyond the railways forming the undertakings of the North British Railway and of the Edinburgh and Glasgow Railway Company respectively, or any part thereof, and on the plain literal interpretation of these words, an interpretation which is, I think, good also from the point of view of the purpose and intent of the Act, the traffic we are concerned with comes within them. As to the other point, the Caledonian Company, who are the respondents, contend that the route in this case is regulated by the Caledonian and Scottish North-Eastern Railways Amalgamation Act 1866, and that the Act of 1865 does not under the circumstances apply. The matter stands thus—in 1865 the Scottish North-Eastern Railway belonged to an independent company, and the North British Company had no special facilities over or upon it. The special facilities given by the Act of 1865 to the North British Company for the accommodation of traffic sent from the Scottish Central Railway *via* the North British Railway to any place on or beyond it, as for instance Aberdeen, did not extend to the Scottish North-Eastern, which was at that time neither Caledonian nor North British. But as to the railways to which they did apply in 1865, they still apply to them, the act of 1866 making no difference in that respect, for the reason that section 135 of the Act of 1866 provides that nothing contained in that Act shall prejudice or affect any rights, powers, or privileges conferred by the Act of 1865 upon the North British Company, and as among the privileges or facilities so conferred there is this in section 75—"All traffic specially consigned by the public as to be conveyed by the Scottish East Coast Companies' (now the North British Company's) route shall be sent by such route"—the applicants are, I think, justified in claiming that the traffic from Bannockburn shall be sent by their route. But while the Act of 1866 does not, as regards that route, affect such part of its through route as is either Scottish Central or North British, it does affect the portion which is Scottish North-Eastern. The Scottish North-Eastern ceased in 1866 to belong to an independent company. It was amalgamated with the Caledonian Railway by an Act of that year, which at the same time gave to the North British Company running powers and other facilities on the Scottish North-Eastern for Scottish East Coast traffic similar to those which the North British had under the Act of 1865 on the Scottish Central for similar traffic. These powers, however, were given with a limitation, section 108 of the Act of 1866 providing that nothing contained in that Act should authorise the North British Railway Company to carry or interfere with any traffic arising and terminating on the railways of the Caledonian Company. It is this section of the Act of 1866 on which the Caledonian Company mainly rely for the course they take, and which they regard as superseding the Act of 1865, where traffic to which that Act would otherwise apply is made by the Act of 1866 to become traffic arising and terminating on the railways of the Caledonian Company. As already said, I do not think, in view of section 135 of the same Act, that it has the effect they suppose; but assuming that the railways of the company referred to in section 108 denote not merely the Scottish North-Eastern, but the railways anywhere of the Caledonian, the North British Company could not, it would seem, carry or interfere with the traffic from Bannockburn to Aberdeen after it reaches the Scottish North-Eastern, though the Caledonian Company might still be bound to give it the facilities mentioned in sections 100 and 101. But we are not now called on to dispose of this point, as the question raised by the applicants is not as to their powers over the Scottish North-Eastern, but as to the effect of the Act of 1866 on their powers under the act of 1865.

VISCOUNT COBHAM—I concur.

The Caledonian Railway Company appealed, and argued—The question here was as to the interpretation of the two statutes of 1865 and 1866. It was not possible to restrict it to the Act of 1865, for the respondents could only get to Aberdeen by the use of their running powers acquired by the 1866 Act, and these powers must be taken subject to all their conditions. That brought in section 108 of the 1866 Act, which distinctly excluded the North British Company from interfering with this traffic which satisfied the definition as arising and terminating on the Caledonian Railway. It was to be kept in view that the rights and privileges conferred on the East Coast Companies by the Statute of 1865 were not given with a view to traffic of this nature, for those companies had no route north to Aberdeen then, but only after they had got the running powers in 1866 and had built the Tay Bridge. The facilities were conferred to maintain the competitive routes to the south, and prevent the amalgamation being used to divert traffic to the south from the East Coast route. It was the spirit and intention of the Acts which were to be given effect to, and consequently the term "East Coast Traffic" as defined should not be stretched to include traffic never in contemplation when the protection was given.

Argued for the respondents—The question here was really the interpretation of the 1865 Act. Was the traffic in question East Coast traffic? If so, the North British Company was entitled to receive it. Now, the definition was quite clear, and it certainly covered this traffic, and that really ended the question. But the Act of 1866

did not help the appellants, for the privileges conferred by the Act of 1865 were conserved by section 135, and the safeguarding to the Caledonian Company of traffic arising and terminating on the railway applied only to traffic which never left that railway—*Distington Iron Company, Limited* v. *London and North-Western Railway Company*, 6 R. & C. Cases 108.

At advising—

LORD PRESIDENT—There is a traffic in coal from the Bannockburn Colliery situated on the Scottish Central (now Caledonian line) between Greenhill and Perth, about four miles south of Stirling, to Aberdeen. The railway system of the North British Company connects at Stirling with the Scottish Central Railway of the Caledonian Company, but the latter company has declined to forward the coal traffic in question *via* Stirling and the North British Company's route by the Tay Bridge to Aberdeen, although the coal is consigned by the senders to go by the North British Company's route, including the part of that route over which the North British Company has running powers from Kinnaber Junction to Aberdeen. The Caledonian Company disregards the routing by the senders and forwards the traffic by its own route to Aberdeen *via* Perth, maintaining that it is not under any obligation to forward it by the North British Company's route, including the part of that route over which that company has running powers. The North British Company maintains that the Caledonian Company is bound to forward the traffic as routed, and a difference has thus arisen between the companies in regard to the Act of 1865, which falls to be determined by arbitration in terms of section 84 of that Act.

The North British Company maintains that the coal traffic in question from Bannockburn to Aberdeen falls within the definition of Scottish East Coast traffic given in section 73 of the Act of 1865, and I am of opinion that in this contention the North British Company is right. The traffic is directed to pass from a place on the Scottish Central lines to a place on or beyond the lines of one of the Scottish East Coast Companies, and I understand that the Caledonian Company does not dispute that as things stood in 1865 the traffic fell within the definition of Scottish East Coast traffic given in section 73 of the Act of that year. The North British Company's system did not then extend further north than Dundee, nor did the system of the Caledonian Company extend further north than Perth, and if traders consigned their coal to go to Aberdeen *via* Dundee instead of *via* Perth, it would, I apprehend, have been the duty of the Caledonian Company to give effect to the consignment.

The Caledonian Company, however, maintains that even if this be so the rights and liabilities of the respective companies in regard to the traffic in question were changed by the Caledonian and Scottish North-Eastern Railways Amalgamation Act of 1866, the main object of which, they say, was to transfer to the Caledonian Company the line from Perth to Aberdeen, with its accessories. While providing that the North British Company should have running powers over it for the purposes of conveying Scottish East Coast traffic, the new definition of Scottish East Coast traffic in section 99 of the Act of 1866, when used in that Act, being "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." The Caledonian Company argues that by these provisions traffic from Bannockburn to Aberdeen was changed from being "Scottish East Coast traffic" to being "local traffic," within the meaning of section 108 of the Act of 1866, and that consequently the North British Company is now not entitled to interfere with it, even assuming that it might have been entitled to do so prior to the passing of the Act of 1866. The Caledonian Company maintains that the traffic in question satisfies the definition in section 108 of that Act, because it arises at one station of the Caledonian Company (Bannockburn) and terminates at another station of that company (Aberdeen), although it may have passed over a large part of the systems of the East Coast Companies between these points. It appears to me, however, the words "arising and terminating on the railways of the company," as used in section 108, involve or include the idea that the traffic must also be carried over the railways of the company. On this question I may refer to the case of the *Distington Iron Company, Limited*, v. *The London and North-Western Company and others*, 6 Railway and Canal Traffic Cases, 108, in which an opinion was given that the expression "traffic arising and terminating on the railway" means traffic which does not pass over any other railway.

I agree with the Commissioners in thinking that the later Act was chiefly directed to extend the traffic of the Caledonian Company without, so far as appears, being intended to diminish the facilities or other rights which the North British Company previously enjoyed, and that upon a sound construction it does not deprive the North British Company of these facilities and rights. I may also refer to section 135 of the Act of 1866, by which it is declared that nothing contained in the Act shall prejudice or affect any rights, powers, or privileges conferred by

the "Caledonian and Scottish Central Railways Amalgamation Act 1865," on the railway companies therein mentioned, including the North British Railway Company. From this it, in my judgment, follows that if coal consigned from Bannockburn to Aberdeen *via* the North British Railway was prior to 1st August 1866 "Scottish East Coast traffic," it remained "Scottish East Coast traffic" after the passing of that Act, with the result that the North British Company is still entitled to have it (the coal) handed over to it, to be forwarded by its lines, as these may exist for the time.

For these reasons I am of opinion that the North British Company is entitled to have coal traffic from Bannockburn to Aberdeen which is specially consigned *via* Stirling and the Tay Bridge, delivered to it at Stirling by the Caledonian Company, to be forwarded by that route, and that the judgment of the Railway Commissioners is right.

LORD M'LAREN—I agree with your Lordships that the judgment of the Railway Commissioners is well founded in law and ought to be affirmed. We are only a Court of Appeal from that Commission upon questions of law; and while we are bound to give effect to our own opinions upon any general question of construction, I should always be disposed in the construction of particular expressions in Railway Acts, which are of frequent occurrence and which have come to acquire a fixed meaning, to give great weight to the opinion of the members of the Railway Commission, who are necessarily more familiar with the nomenclature of these Acts and the mode of working them than we can be. I should be particularly disposed to apply this principle to the question which arises as to the meaning of the words "traffic arising and terminating on a railway." The Greek logicians taught us that everything had a beginning, a middle, and an end, but the framers of these Railway Acts seem to have forgotten that a journey is not confined to a beginning and an ending. Now, if I were left to my unaided judgment I should have thought that a journey which was defined by its beginning and its end might, if there were two ways of doing it, be satisfied by carrying the goods to the middle part of the journey either on the one railway or the other. But then these words have come to be considered as having a technical meaning as being words descriptive of a journey which is entirely performed by the railway of one company. That being the construction put upon the words by the Railway Commissioners, and one which has some support from a judgment of the High Court of England, I should not be disposed to substitute any impression of my own for the considered judgment of a technical question of this kind of other authorities. That difficulty—and I must say it is a difficulty—being disposed of, then I think the solution of this controversy is quite simple. Your Lordship has pointed out that if the Act of 1866, by which the Scottish North-Eastern Railway Company was merged in the Caledonian Railway Company, had never been passed, and if this question had arisen with an independent Scottish North-Eastern Railway Company, and upon the construction of the Act of 1865, then beyond all question the North British Railway Company would have been entitled to have these goods carried by their route, because the statute in terms prescribes the obligation to carry them. Well, then, the matter is a little obscured by the passing of the Act of 1866, because the language of the clause is not quite the same, or rather is not completely applicable to all the conditions that have been brought about by this change of ownership of the part of an important railway line. But I think that as rights were given to the railways constituting the East Coast system by the statute of 1865 it is not to be presumed that these rights were taken away by the Act of 1866, unless a clear intention to take them away can be gathered correctly from that Act, because the policy of the railway legislation has been that whenever facilities for competition of traffic have once been given that is understood to be a privilege which would not be taken away except in respect of some counter consideration. Apart from that question of policy, I think it is a sound principle of construction that a privilege given by one Act is not presumed to be taken away by another Act merely because the language may be ambiguous. On the contrary, it lies with the party who alleges that a privilege has been taken away to prove it by showing that the language of the Act admits only of that construction, or at all events that such is its sound construction. I have not been able to satisfy myself that on a sound construction of the Act of 1866 the privileges of the North British Railway Company in regard to the transmission of their traffic conferred by the Act of the previous year were taken away, and the result of my opinion would be that the decision of the Railway Commissioners be affirmed.

LORD KINNEAR—I agree with your Lordships. I see no reason for thinking that the Railway Commissioners have fallen into an error in law in the judgment they have given, and I do not think it necessary to repeat the reasons which they have given in detail, and which your Lordships have given for that opinion.

The LORD PRESIDENT intimated that LORD ADAM, who was absent, concurred.

The Court refused the appeal, and affirmed the judgment of the Commissioners.

Counsel for the Appellants—Clyde, K.C.—Cooper. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Respondents—Dean of Faculty (Asher, K.C.)—Ure, K.C.—Grierson. Agent—James Watson, S.S.C.