LORD SHAND—I am of the same opinion.

LORD DAVEY—I concur.

LORD BRAMPTON—I am of the same opinion.

LORD ROBERTSON—It is conceded by the appellant that the contract out of which this claim arises was not assignable. The principle that contracts involving *delectus personæ* are not assignable is well rooted in Scots law as well as in the law of other countries. It may, however, be conceded to the appellant that it does not necessarily follow from this that a right may not arise out of an unassignable contract which is itself assignable. I prefer in a Scotch case to call such a right *jus crediti* rather than chose-in-action. The simplest case would be that of a money payment pure and simple which has accrued. Even in the case of such a claim, the assignee, while of course entitled to sue in his own name, is liable to all the answers which could have been made to his cedent. But the questions arising in the present case are, first, whether this claim for £500 of damages is such a money claim pure and simple, and second, whether it has been assigned. Now, the second of these questions seems to me so clear that I do not dwell on the first further than to say that after what has been said the appellant must not consider it as clear. But on the second of these questions I do not find any assignation of debt or damages. It is quite true that the law does not require technical words in an assignation. But here the only thing assigned in the body of the assignation is concessions, and even if this word be amplified by the schedule, then "contracts and concessions" are assigned. Now, at the date of this assignation the claim now sued on had already accrued, and on the theory of the appeal it was a claim separable from the contract. I find it impossible to read this as an assignation of a pecuniary claim. It is at best an assignation of the contract as a whole, and it is in my opinion impossible to apply it to the present claim.

Appeal *dismissed*, and interlocutors appealed from *affirmed*.

Counsel for the Pursuers and Appellants—Lawson Walton, K.C.—J. C. Watt—J. G. Joseph. Agents—Goodchild & Hammond, for William Geddes, Solicitor.

Counsel for the Defender and Respondent—Bousfield, K.C.—Younger. Agents—Sweetland & Greenhill, for Campbell & Smith, S.S.C.

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*Friday, May* 10.

(Before the Lord Chancellor (Halsbury), and Lords Ashbourne, Shand, Davey, and Brampton.)

## KIRKCALDY AND DISTRICT RAILWAY COMPANY *v.* CALEDONIAN RAILWAY COMPANY,

(*Ante*, June 22, 1900, 37 S.L.R. 820.)

*Contract — Construction — Agreement to Contribute to Expenses of Promoting Railway Bill—Relief or Primary Obligation—Railway.*

The Caledonian Railway Company, being anxious to obtain direct access into the county of Fife, agreed with the Kirkcaldy and District Railway Company that the latter should promote a bill for the construction of four railways. It was agreed between the parties that, in the event of the bill authorising the construction of the railways not receiving the Royal Assent from any cause other than the withdrawal therefrom of the support of the Caledonian Railway Company, that company should "contribute towards the expense of the said bill (1) two-thirds of all outlays incurred in connection with the promotion of the bill; (2) one-third of the professional charges . . . in connection with such promotion." The House of Lords held the preamble not to be proved so far as it related to the three railways Nos. one, two, and four included in the bill. These three were the only ones in which the Caledonian Railway Company was interested. The preamble was held to be proved as regards railway No. 3.

In an action at the instance of the Kirkcaldy Railway Company against the Caledonian Railway Company for payment of the proportionate amount of expenses connected with the bill, in accordance with the agreement between the parties, the defenders maintained—(1st) that the bill had in fact received the Royal Assent, and that on a sound construction of the agreement they were not liable for any portion of the sum claimed, and (2nd) that their obligation was one of relief only, and that as the whole expenses had been paid by the North British Railway Company and not by the pursuers the claim of relief must fail.

*Held* (*aff.* judgment of the First Division) that under the agreement the defenders were liable in the sum sued for.

This case is reported *ante ut supra*.

The defenders, the Caledonian Railway Company, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—But that we have heard for some short but not unreasonable time the two very able arguments which have been addressed to your Lordships on behalf of the appellants, I should have

thought that in all good sense this case was unarguable. The question is not what we should consider it would be likely that the parties would do—what would satisfy that which in a loose sense may be called the justice of the case; the question is what the parties have said by their agreement, and I really find myself wholly unable to deal with the words in any other sense than that in which the Courts below have dealt with them. It seems to me that the words are much more plain as they stand than anything that I can say upon the subject.

I take the words themselves, and I think they require no very long exposition. Everybody should approach the construction of an agreement with a knowledge of the circumstances in which it was made, in order to construe the words if there is any doubt about it. But what doubt is there here? The parties here have expressly pointed out that certain provisions are to come into effect in certain events. The events have not happened. Then what in the world have we to do with what might have happened in different circumstances? What does it matter whether it has been described as a "Bill" or an "Act"? We can only look at the words which we have got before us, and I must say to construe an Act by reference to something which the parties would be likely to do would be to unsettle the law with regard to the construction of written agreements. If a great deal has been omitted that might have been said, and that the parties would have been likely to have agreed upon, what have we to do with that? We cannot make the agreement for the parties. No Court can supply that which the parties have left unprovided for. It is burning daylight to suggest that these words are susceptible of any other construction than that which the Courts below have given to them.

For these reasons I move that the interlocutors appealed from be affirmed, and this appeal dismissed, with costs.

LORD ASHBOURNE—I quite concur.

LORD SHAND—I also concur.

LORD DAVEY—The only question is the construction of an agreement the validity and binding effect of which are not disputed. I agree with what has been already said, that the construction of the agreement is free from any doubt whatever.

LORD BRAMPTON—I agree.

Appeal *dismissed* and interlocutors appealed from *affirmed*.

Counsel for the Pursuers and Respondents—Dean of Faculty (Asher, K.C.)—Ure, K.C. Agent—John Kennedy, W.S., for Dundas & Wilson, C.S.

Counsel for the Defenders and Appellants—Lord Advocate (Graham-Murray, K.C.)—Cripps, K.C. Agents—Grahames, Currey, & Spens, for Hope, Todd, & Kirk, W.S.

# HIGH COURT OF JUSTICIARY.

*Friday, April 26.*

## CIRCUIT COURT, GLASGOW.

(Before Lord Young.)

## H.M. ADVOCATE *v.* DICK.

*Justiciary Cases—Crime—Malversation of Office—Bribery and Corruption—Town Councillor—Magistrate—Licensing Court—Money Received by Town Councillor and Retained by Him on Becoming a Magistrate—Indictment—Relevancy.*

A panel was charged with having in March, when he was a member of the Town Council of Glasgow, corruptly received from an applicant for a public-house licence the sum of £600 as a bribe, in consideration of which he undertook to procure the granting of the licence by the Magistrates, and (the panel having meantime become a magistrate of Glasgow) with having in August, in consideration of his retaining the said £600, corruptly undertaken to procure the licence for the applicant in question, and with having in October, in consideration of the said bribe and corrupt undertaking, voted in the Licensing Court for the granting of the licence.

*Held* that the charge was irrelevant, in respect (1) that in March, when the receipt of the money was alleged, the panel, being then merely a town councillor and not a magistrate, had no duty or concern with the granting of licences in the Licensing Court, and (2) that the receipt by him in these circumstances of the money in March could not after he became a magistrate (he being under no obligation to return the money) make him guilty of bribery to the malversation of his office, either in August, when he was alleged to have agreed to procure the licence in consideration of retaining the money, or in October, when he voted in the Licensing Court for the granting of the licence.

*Justiciary Cases—Crime—Solicitation of Bribe by Magistrate—Solicitation Not Followed by Completed Act of Bribery—Attempt to Commit a Crime—Indictment—Relevancy—Criminal Procedure (Scotland Act* 1887 (50 *and* 51 *Vict. cap.* 35), *sec.* 61.

An indictment charged a panel with having, when a magistrate, corruptly solicited a bribe from an applicant for a public-house licence as a consideration for corruptly voting for the granting of such licence, and thus attempted to obtain a bribe in breach of his duty as a magistrate and to the malversation of his office.

*Held* that the indictment was irrelevant, in respect that it alleged nothing more than an expression of willingness to do what would be a crime.