

gation. There are many analogies in the law favourable to such a charge. It may be a matter of nicety to fix the precise sum of commutation, or to find *media* for declaring it in the present action. But on those points I desire to hear parties.

In regard to the Caledonian Railway Co., also called as defenders, I think they are entitled to get free of the action so far as directed against them. It is clear that, after forming and making over the substitute roads required by their operations, they are not liable in any part of the maintenance of these roads. They thereby restore matters, constructively, to their original position, and are no further liable. They are liable under the statutes for the maintenance of "the bridges and immediate approaches;" but this obligation they admit, and express their willingness to fulfil. In so far as there may arise any controversy as to the precise extent of road covered by the phrase "immediate approach," or as to the apportionment of liability between the Caledonian Co. and some other railway company or individual, the present action is not suited for the determination of such a controversy. The proposed disposal of the action will leave all such questions open.

Agents for Pursuers—Hill, Reid, & Drummond, W.S.

Agents for Earl of Kinnoull—Mackenzie & Ker-mack, W.S.

Agents for Caledonian Railway—Hope & Mac-kay, W.S.

Friday, June 28.

GREENOCK AND WEMYSS BAY RAILWAY CO.
v. CALEDONIAN RAILWAY CO.

Railway—Administration—Tolls and Rates—Joint Committee.

Held (in accordance with judgment of 8th July 1871, in a question between the same parties) that it was for the Caledonian Railway Co., in the first instance, to fix the tolls and rates to be charged on through traffic from Glasgow and Paisley to the station of Upper Greenock, on the Wemyss Bay line, and that the joint committee of the two Companies have only power to decide what portion of the gross fare is to be allocated to the Wemyss Bay Co. in respect of the portion of their line traversed.

This was an appeal from the Sheriff-court of Lanarkshire at Glasgow.

The connection between the two Railway Companies will be found more fully explained in vol. viii, p. 634. It is sufficient to say that, in accordance with an agreement sanctioned by Act of Parliament, the traffic on the Wemyss Bay Railway, including the fixing of the rates to be charged in respect of the said traffic, is managed by a joint committee of six persons—three named by the directors of the Caledonian Co., and three by those of the Wemyss Bay Co. The Wemyss Bay Railway commences at a point on the Caledonian Railway about half-a-mile west of Port-Glasgow, and runs to Wemyss Bay. There is no station at the point of junction. The first station on the Wemyss Bay line after leaving the Caledonian line is at Upper Greenock, about two miles from the junction. There are also two other stations at Greenock, belonging to the Caledonian Railway

Co. and the Glasgow and South-Western Railway Co.

Previous to April 1871, the fares charged by the different railway companies from Glasgow and Paisley to Greenock were, for third-class passengers, 6d. single, and 1s. return—a fixed sum being apportioned out of the gross fare by the joint committee to the Wemyss Bay Co. for each passenger booked to Upper Greenock, in respect of the part of their line traversed. On the 13th March 1871 Mr Ward, general superintendent of the Caledonian Railway Co., wrote to Mr Keyden, secretary to the Wemyss Bay Co., announcing that the Glasgow and South-Western and Caledonian Companies had resolved to alter the fares, on and after 1st April, between Glasgow and Paisley and Greenock; and, in particular, to raise the third-class fares to 9d. single, and 1s. 6d. return.

The Wemyss Bay Co. refused to consent to an alteration of the third-class fares to Upper Greenock; and presented a petition to the Sheriff for interdict against the Caledonian Railway Co. "from issuing and circulating, or causing to be issued and circulated, bills, time-tables, or other notices or advertisements denoting the said increased rates of ninepence and one shilling and sixpence for third-class passenger traffic between Glasgow and Paisley and Upper Greenock, and from exacting from the public the said increased rates, aye and until the matter of the said rates shall have been submitted to and fixed by the said joint committee, or, in the event of their differing in opinion, been settled by arbitration."

On 14th July the Sheriff-Substitute (GALBRAITH) dismissed the action, holding that the question was ruled by the decision of the Court of Session, pronounced July 8, 1871 (vol. viii, p. 634), in a question between the same parties, by which it was determined that the powers of the joint committee were limited to the regulation of the rates and fares to be charged on the Wemyss Bay Railway, and did not extend to the regulation of through fares from Glasgow to stations on the Wemyss Bay line.

The Sheriff (BELL), on appeal, recalled, and granted interdict as craved, holding that the present question was not decided by the judgment of the Court of Session.

The Caledonian Railway Co. appealed.

WATSON and JOHNSTONE for them.

SOLICITOR-GENERAL and BALFOUR in reply.

At advising—

LORD PRESIDENT—This case bears a striking resemblance to the one which we decided last year. The prayer of the petition is—(*reads prayer of petition*). To grant this prayer would be to reverse our decision of last July. We held that the joint committee have nothing to do with fixing the rates from Glasgow. It follows of necessity that the Caledonian Railway Co. must fix, in the first instance, the gross rates to be charged from Glasgow and Paisley to Upper Greenock; but it is necessary to reconcile with that the action given to the joint committee by the agreement (Article 11) to regulate the fares on the Wemyss Bay line. The only way of reconciling the rights and interests of the parties is that the joint committee shall settle what part of the gross fare is to go to the Wemyss Bay Co., and that is what has hitherto been done. It is plain that the prayer of the petition cannot be granted. That would be sufficient for extricating the present question. The point at issue between the Companies is very distinctly stated in Article 11 of the

Statement for the Caledonian Railway Co., and relative Answer for the Wemyss Bay Co. The Statement of the former is:—"The petitioners have no power to control or interfere with the fixing of the rates, tolls, duties, and charges to be levied on said railway; and the joint committee have only the power of fixing the fares to be paid by the respondents to the petitioners for the portion of the Wemyss Bay Railway run over. Neither the petitioners nor the said joint committee have the power of fixing or interfering with the through rates charged by the respondents—the respondents remaining liable to the petitioners for the rate fixed, or to be fixed, for the distance run over the Wemyss Bay Railway." The Answer of the latter is:—"Denied. The through rates, as well as the local rates, on the petitioners' line, are subject to the regulation of the joint committee,"—the proposition which we negated last July.

But it is contended by the Solicitor-General that, though the petitioners are not entitled to interdict in terms of the prayer of the petition, they may be entitled to some remedy within the prayer, because he thinks they have not been properly treated by the Caledonian Co. in the way of due notice of the alterations. The letter of 13th March 1871, by Mr Ward, the general superintendent of the Caledonian Co., to the secretary of the Wemyss Bay Co., announces, in the first place, what was doubtless well known to the latter, that the Glasgow and South-Western Co. and the Caledonian Co. had resolved to alter their fares between Glasgow and Greenock. Each of these Companies had a station in Greenock. Besides that, there was the station at Upper Greenock belonging to the Wemyss Bay Co., which is the first place of stoppage on leaving the Caledonian line and going on to the Wemyss Bay line. It is obvious that the fares charged to the upper and lower stations at Greenock must be the same. Mr Ward proceeds to state the new charges, and, in particular, that the third-class fares from Glasgow or Paisley to Greenock was to be 9d. single, and 1s. 6d. return. It followed that if the Wemyss Bay Co. were not satisfied with the proportion of the fares which they were at present receiving, they must go to the joint committee (who have the power of determining what proportion of the gross fare is to go to the Wemyss Bay Co.) and obtain an alteration. It is said that this was not timeous notice of an alteration to take effect on 1st April. I think a fortnight's notice was ample. But it is not want of notice that is complained of at the time. The complaint was that the Caledonian Co. were not entitled to make the announcement at all. We have now held that the Wemyss Bay Co. were wrong in their position. They could not refuse to concur in raising the fares. All that they were entitled to was a new apportionment of the fares. In short, from that date I think the Wemyss Bay Co. were entirely in the wrong, and that we should refuse this petition.

LORD DEAS—I think there might have been a competent question, whether the Caledonian Railway Co. were entitled to make the alteration without due notice to the Wemyss Bay Co. It is plain that, if the Caledonian Railway Co. had raised the rates on their own line, while the rates on the Wemyss Bay line remained as they were, the Caledonian Co. would be reaping all the advantages of the higher rates, and the Wemyss Bay Co. all the disadvantages. But want of notice is

not the thing complained of. We must take the case as it stands.

LORD ARDMILLAN concurred.

LORD KINLOCH—I have arrived at the same conclusion. The prayer of this petition is in the teeth of our former judgment. No doubt that judgment was not pronounced when this petition was presented; but as soon as it was pronounced the petition ought to have been withdrawn.

The Court recalled the interlocutor of the Sheriff, and refused the prayer of the petition.

Agents for Caledonian Co.—Hope & Mackay, W.S.

Agents for Wemyss Bay Co.—M'Ewen & Carmont, W.S.

Friday, June 28.

CALEDONIAN RAILWAY COMPANY v. GREENOCK & WEMYSS BAY RAILWAY COMPANY.

Arbitration—Reference.

Circumstances in which it was held that a clause of arbitration did not exclude an action, but only made it necessary to refer to arbitration any questions which might arise in the course of the proceedings falling within the scope of the arbitration clause.

Held that an arbiter has no power conclusively to determine the extent of his own jurisdiction, but that the question what falls within the reference is one ultimately for the Court.

Where the A railway company, out of the balance of its gross receipts, after paying working expenses at a specified rate to the B railway company, was taken bound to pay the charges for maintenance of its line, the government duty, taxes, passenger duty, and rents and feu-duties of land held by it, and also the "general charges," and after providing for those payments to pay over one-fourth of the balance to the said B company (interest on money borrowed being a charge on its own remaining three-fourths of the said balance), and where the said interest on borrowed money exceeded not only the three-fourths but the whole divisible balance as above stated, the A company contended that there was no sum divisible between them and the B company in terms of their agreement. Held that this question was "a difference arising between the parties respecting the true meaning or effect of the agreement," and that it touched directly "on the mode of carrying the same into effect," and so fell under a clause referring all such questions to arbitration.

The defenders in this action, the Greenock and Wemyss Bay Railway Company, were incorporated by the Act 25 and 26 Vict., c. 160, 17th July 1862. The share capital of the company was fixed at £120,000, and the borrowing powers at £40,000. By an agreement, dated 1st and 2d April 1862, entered into by the pursuers, the Caledonian Railway Company and the provisional directors of the Greenock and Wemyss Bay Railway Company, and afterwards confirmed by the latter company's Act (1862), it was agreed that the Caledonian