at which they agreed to divide the estate in a certain manner. The husband of one of the truster's daughters claimed that under the provisions of section 7 of the Reform Act 1832 he was entitled to have his name entered in the register as proprietor, in right of his wife, of a house and garden which had been apportioned to her at this meeting. The claim was objected to, on the ground that the house and garden had not come to her by *mortis causa* disposition, in the sense of the provision of the statute. It was admitted in the Case that the residue of the truster's estate consisted wholly of heritage, and that the right of the daughter to her one-seventh share of the heritable properties which constituted the residue was of a heritable nature. No conveyance of the subjects had been executed by the trustees. Objection *repelled*, and *held* that the right of the claimant's wife to the subjects was derived from the trust-disposition and settlement, and had come to her by succession, and that the claimant was therefore entitled to have his name entered in the roll.

Counsel for Appellant (Objector) — Young. Agent—John Stewart, W.S.

Counsel for Respondent (Claimant)—Darling. Agents—Russell & Dunlop, C.S.

COURT OF SESSION.

Tuesday, September 30.

BILL CHAMBER.

[Lord Kinnear, Ordinary on the Bills.

NORTH BRITISH RAILWAY COMPANY *v.* ASSESSOR OF RAILWAYS AND CANALS.

Valuation Cases—Railway—Deductions allowed from Nett Revenue—Valuation of Lands (Scotland) Amendment Act 1867 (30 *and* 31 *Vict. c.* 80), *sec.* 3.

A railway company was in use to employ some of its stock and plant in working various separate railway undertakings in connection with it, and received from the companies owning these undertakings £21,000 for doing so. The assessor of railways and canals in annual revenues this sum of £21,000, and making his valuation included in the nett allowed a deduction of only 5 per cent. on the value of the plant and stock used in working these lines, instead of the deduction of 25 per cent. allowed on the value of the rolling-stock and plant used on the company's own line. *Held* that this deduction was insufficient, and that 18 per cent. ought to have been allowed.

Opinion that the revenue derived from working the lines of other companies, not being rent of heritable property, ought not to enter the account at all.

Section 3 of the Valuation of Lands Act 1854 provides that a deduction shall be allowed of one-half the expenses truly expended in maintaining and repairing the permanent way of a railway. *Held* that this section does not warrant any deduction on the value of rails, chairs, and other materials purchased and kept in store for the purpose of future use in maintaining the permanent way.

Goods in Transit—Insurance.

A deduction allowed (in respect of practice to that effect) from the gross revenue in respect of insurance on goods in transit.

Question whether the claim was well founded in principle?

The North British Railway Company appealed to the Lord Ordinary on the Bills against the valuation put upon the lands and heritages forming their undertaking by William Monro, assessor of railways and canals. They stated, and it was admitted, that the practice in valuing railways had been to take as a foundation the gross revenue from all sources, and to deduct the working expense, so as to reach the nett revenue; thereafter to deduct 25 per cent. on the value of the plant and rolling-stock employed on the lines belonging to the company, which 25 per cent. was made up of (1) 5 per cent. interest on money invested in plant, (2) 5 per cent. for deterioration of plant, (3) 12 per cent. for tenants' profits, (4) 3 per cent. for accidents and incidents; that the whole value of the rolling-stock and plant belonging to them upon which an allowance of 25 per cent. was made should be put at £3,679,704, instead of £3,283,121; and they complained, *inter alia*, that the carting plant, the value of which formed part of the above sum, had been put at £12,775 instead of £21,095, which was its true value.

The appellants also stated that a portion of their rolling-stock, which they valued at £43,550, was used in working certain short lines of railway which were worked in connection with the North British system but belonged to other companies. On this value they claimed a deduction of 25 per cent., whereas the assessor had only allowed a deduction of 5 per cent. For working these lines the appellants received £21,000 in all, which sum the assessor had included in the gross revenue.

Another ground of complaint was that the assessor had made no deduction on the value of the chairs, rails, &c., which the railway company had provided and stored for future use in the repair of the permanent way. They claimed this deduction under the Act 30 and 31 Vict. cap. 80, sec. 3. The value of this stock they put at £103,042, and claimed a deduction of 10 per cent. upon £51,521, being half of the above sum. Section 3 of the Valuation of Lands (Scotland) Amendment Act 1867 (30 and 31 Vict. cap. 80), being the section founded on, provides — "In ascertaining the yearly rent or value in terms of the first recited Act [the Valuation Act 1854] of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway company, and forming part of the undertaking of such company, one-half of the expenses incurred in maintaining or repairing the permanent way of railways, and charged to revenue in the published accounts for the year preceding that for which the valuation is made, shall be allowed by the assessor of railways and canals as a deduction before the *cumulo* yearly rent or value of each railway is fixed, provided that such assessor is satisfied that such expenses have been truly expended in main-

taining and repairing the permanent way of each such railway."

Another series of objections to the assessor's valuation consisted of complaints as to the way he had dealt with fences, slopes, and embankments as stations. The assessor treated fences in and surrounding a station as half station and half permanent way. The appellants maintained that only the balance of the fencing, after deducting what would be required if there were no station, ought to be valued as station. The assessor treated slopes and embankments in or at stations as station. The appellants maintained that these would be required if there were no station, and that in cases where they had been let they had already been assessed on the rental of them.

The railway company also appealed against a refusal of the assessor to allow sufficient deduction for the addition caused to gross revenue by their acting as insurers of the goods they carried; an allowance had been made under this head since 1868. The assessor allowed £1000, and the appellants claimed that its proper amount should be £2000.

The Commissioners of Supply of the County of Lanark also appealed against the valuation put upon the property of the North British Railway, in respect that the value of the company's plant was much smaller than as stated by the assessor, and also that the deduction of 25 per cent. allowed was too large.

The Inspector of Poor of the City Parish of Glasgow also appealed against the assessor's valuation, on the ground that although he had put the value of the lands and heritages belonging to the company at £569,468, they were in reality worth £825,700, and that the allowance of 25 per cent. on the company's plant was too high, and that the sum allocated to the complainer's parish was less than it ought to be.

The Inspector of Govan Combination also appealed on the same grounds.

The Lord Ordinary (KINNEAR) issued the following interlocutor:—"The Lord Ordinary having considered the appeals for the North British Railway Company, the Inspector of Poor of the City Parish of Glasgow, the Inspector of Poor of the Parish of Govan, and the Commissioners of Supply of the County of Lanark, against the valuation of the lands and heritages belonging to the said railway company, Finds that the calculations upon which the said valuation proceeds are erroneous, and ought to be corrected in the following particulars, viz., First, that the value of the carting plant belonging to the said company ought to be stated at £21,095 instead of £12,755; second, that the reduction allowed upon the value of the rolling-stock and plant employed in working the lines specified in the fourth article of the objections for the railway company ought to be stated at 18 per cent. instead of at 5 per cent.; third, that the allowance of £1000 which has hitherto been deducted from the gross revenue of the company in respect of insurance upon goods in transit ought to be continued for the present year: To this extent and effect sustains the appeal for the said North British Railway Company: *Quoad ultra* dismisses the said appeals: Dismisses the appeals for the said Inspector of Poor of the City Parish of Glasgow, the said Inspector of Poor of the Parish of Govan, and the said Commissioners of Supply for the County of Lanark; and remits to the assessor to amend the valuation in accordance with this interlocutor.

"*Note.*—I. It is admitted that the value of the carting plant belonging to the railway company has been underestimated.

"II. The objections stated by the railway company to the allowance of 5 per cent. on the value of the plant belonging to them, and employed in working certain other railways, as being insufficient, appears to me to be well grounded. It appears that for working these lines they receive £21,000 or thereby per annum, which the assessor includes in his statement of their gross revenue, while, on the other hand, he has allowed 5 per cent. upon the value of the plant so employed, among the deductions from the nett revenue of the company, by which he reaches the annual value of their heritable property. The company in their Case maintain that the deduction should be 25 per cent., but it was admitted at the bar that 18 per cent. was sufficient to cover interest, depreciation, profits, and accidents and incidents. On the other hand, it is maintained in a cross appeal that no deduction should be allowed even to the extent of 5 per cent.

"It appears to me that neither the revenue derivable from working lines which belong to other companies, nor any allowance in respect of plant employed for that purpose, ought to enter the account at all. It is the heritable property of the company which alone is to be valued, and the income which they derive from working other lines is no part of the rent of the heritable property. It is immaterial that the rolling-stock and station furniture employed on these other lines belong to them, because these are not heritable subjects. I should therefore have been disposed to think that the item in question of £21,000 ought to be struck out of the account of revenue, but this is not asked by the railway company, and it is explained that from the method in which their accounts are kept it is impossible to distinguish between the working charges applicable to the lines in question and those applicable to their own lines. The assessor therefore has included the income derivable from working the other lines in order to balance the charges applicable to these lines, and no objection is taken to this method of stating the account. It appears to me, however, that if this income is taken into computation at all it ought to be reduced from gross to net income in the same manner as that derived from the lands belonging to or leased by the company.

"III. In finding that the deduction from revenue of £1000 for insurance of goods *in transitu* which has hitherto been allowed to the appellants, ought to be continued for the year 1884–85, I desire to reserve my opinion as to whether the claim as stated is well founded in principle, but the appellants maintain that if it were otherwise they are entitled to deduction for actual loss upon goods so insured. It is said that this is sufficiently covered by the allowance of 3 per cent. for accidents and incidents, but that involves a question of fact as to which I am not in a position to form any opinion. I must assume, in the absence of evidence to the contrary, that the allowances on this account which have hitherto been made and accepted by the railway company are just and reasonable. But it appears that since 1870 an allowance has been made for

insurance upon goods in transit in addition to the 3 per cent. for accidents and incidents, and that since 1876 this allowance has been stated at £1000. The company have had no notice that the 3 per cent. must in future be held to cover loss upon goods for which they are responsible as insurers, and are not therefore put to show that the allowance is insufficient for that purpose. It appears to me therefore that sufficient reason has not been shown for altering the previous practice, and, on the other hand, no reason has been shown for increasing the allowance of £1000 to £2000.

"IV. The appellants' claim that they should be allowed a deduction of 10 per cent. on one-half of the value of their stock of rails, chairs, &c., which they have purchased and have on hand for the purpose of repairing their way is also in my opinion untenable. The deduction to which they are entitled for the expense of maintaining the permanent way is fixed by the 3d section of the Act of 1867, and by that enactment no deduction can be allowed in respect of moneys which have not been actually expended in maintaining or repairing the permanent way, and charged to revenue in the published accounts of the company. The claim in question does not satisfy these conditions.

"V. No sufficient ground has in my opinion been stated for disturbing the judgment of the assessor as to the valuation of the stations at Hawick and Airdrie, as to the manner in which he has distinguished between station and permanent way, or as to the valuation of the fences or of the slopes.

"VI. The objections which have been stated in the appeals taken by various rating bodies against the valuation of the lands belonging to the North British and Caledonian Railway Companies were in part withdrawn at the bar, and in particular it was conceded that, subject to two objections which were still insisted in, the practice which has been followed for many years of stating the value of the company's plant at 75 per cent. of the prime cost, and allowing a deduction of 25 per cent. upon that value for interest, deterioration, tenants' profits, and incidents, must be accepted for the purposes of this appeal as just and reasonable. The two points insisted in were (1) that the assessor has made a double allowance for deterioration of plant, and (2) that he is in error in making an allowance for occupiers' income-tax.

"The assessor has included in the deduction of 25 per cent. on the assumed value of plant an allowance of 5 per cent. for deterioration of plant, and has also allowed the sums entered for repair and renewal in the company's account.

"But this does not necessarily involve a double allowance, since it is assumed that the expenditure upon repairs and renewals will only bring up the plant to 75 per cent. of its original value, and the percentage of 5 per cent. is in like manner calculated upon 75 per cent. of the prime cost. The assessor therefore, following the established practice, has held that one or other of these allowances alone would be sufficient. I express no opinion on the question whether the method which has long been followed of estimating the allowance which should be made for depreciation is correct in principle, or whether the amount allowed is reasonable. The principle upon which the calculation proceeds has not been challenged except in so far as it is supposed to involve a double allowance, and no grounds have been stated to justify my interfering with the assessor's judgment in the question of amount.

"The objection as to the allowance for income-tax is of a similar kind. It is clear enough that the tenants' income-tax is not a proper deduction from the rent. But the deduction is not made on the assumed rent, but from the gross revenue, for the purpose of reaching the amount of the rent which it may be supposed that a tenant would pay. It is true that if a sufficient allowance has been already made for tenants' profits no further deduction can be made for income-tax. But the practice has been to state separately the allowance for profits and the allowance for income-tax. If the entire allowance under these two items is not excessive, it is a mere question of nomenclature whether it should be stated under two heads or one, and I am not in a position to review the assessor's judgment as to the amount. The question depends upon practical considerations which were not brought forward or discussed at the hearing of the appeal."

Counsel for Appellants—Lord Adv. Balfour, Q.C.—R. Johnstone—Dickson. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Parochial Boards and Commissioners of Supply (Appellants in Cross Appeals)—Trayner—Lang. Agents for the Commissioners of Supply of the County of Lanark—Morton, Neilson, & Smart, W.S. Agents for City Parish—W. & J. Burness, W.S. Agent for the Govan Combination—John Gill, S.S.C.

Thursday, November 20.

SECOND DIVISION.

[Sheriff-Substitute of Selkirkshire.

CAIRNS *v.* MURRAY.

Process—Sheriff—Appeal to Court of Session—Value of Cause—Competency—Sheriff Court Act 1853 (16 *and* 17 *Vict. c.* 80), *sec.* 22.

Held (*diss.* Lord Craighill) that where in an action in a Sheriff Court, which when raised is of a value exceeding £25, the sum sued for is restricted by the pursuer to an amount under that sum before the record is closed, an appeal to the Court of Session is incompetent, in respect that the cause is not of a value exceeding £25.

Opinions (*per* Lord Young and Lord Rutherfurd Clark) that litiscontestation takes place when the record is closed, and not when defences are lodged.

In August 1884 Mary Cairns raised an action of damages in the Sheriff Court at Selkirk against John Murray, manager of the South of Scotland Trade Protection Association, for alleged unjustifiable insertion in the "black list" issued by the association, of her name as a defaulting debtor to one of its members. She concluded for payment of £50 as damages. Murray defended the action.

The Sheriff having on 19th September appointed parties to adjust the record on the first Court day, the pursuer on 3d October lodged a minute re-