house. A passage was read from Dr Barclay's Justice of the Peace to the effect that the disqualification of a magistrate to act in his own case should be extended to the case of a proprietor of other licensed premises in the same burgh. I cannot but think that that involves a very alarming extension of the provisions of this section of the Act. The just inference appears to me to be the opposite. It is significant that that passage does not, it is admitted, appear in the last edition of the book.

"It is admitted that this case does not fall within the words of section 13, and I think it is equally clear that the alleged disqualification cannot be said to be of the same kind as those mentioned in section 13. It is said that the disqualification should be extended to the owner of a house in the immediate neighbourhood of the premises for which licence is asked, and it is said that two inns in a burgh so small as Annan is must be held to be in the immediate neighbourhood of each other, but bearing in view that a magistrate is subject to a fine if he acts when he is disqualified, it is impossible to hold that the disqualification arises on a ground so vague and uncertain as the proximity of the two houses.

"Various English decisions were referred to, but none support the pursuer's contention. The question appears to have been mooted but not decided in a case which was quoted from Fisher's Digest, but which is not to be found in any reports in our library—*Rex* v. *Kent*, 34 J.P. Rep. 298, Fisher's Dig. 4, 1182. In *Queen* v. *Lee*, 9 Q.B.D. 394, a magistrate was held disqualified from judging in a prosecution which he directed. In *Rex* v. *Commissioners of Cheltenham*, 1 Q.B.D. 467, an appeal was sustained in reference to rates imposed by certain justices on their own premises. These cases illustrate the sorts of interests which will disqualify a judge, but I do not think they apply, and I think it quite illegitimate when a statute which confers a jurisdiction enumerates the disqualifications of the judges in detail to add to these any other general ground of disqualification."

The Lord Ordinary assoilzied the defenders.

Counsel for the Pursuer — Graham Stewart. Agent—Alexander Wylie, S.S.C.

Counsel for the Defenders—Vary Campbell — C. J. Guthrie. Agents — Morton, Smart, & Macdonald, W.S.

Friday, October 17.

OUTER HOUSE.

[Lord Wellwood.

H.M. ADVOCATE *v.* THE FORTH BRIDGE RAILWAY COMPANY.

Revenue—Income-Tax—Railway Company Yielding no Profit but Paying Interest on Capital—Customs and Inland Revenue Act 1888 (51 *Vict. cap.* 8), *sec.* 24, *sub-sec.* 3 *—Income-Tax Act* (5 *and* 6 *Vict. cap.* 35), *Schedule A*, *rule* 3.

The Income-Tax Act 1853, Schedule D, provides that duty shall be chargeable upon all interest, &c., not charged by virtue of any of the other schedules contained in the Act.

The Customs and Inland Revenue Act 1888, sec. 24, sub-sec. 3, provides that upon payment of interest of money, charged with income tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge for such tax, the person by whom such interest is paid shall deduct the income-tax and account to the Revenue therefor, and such amount shall be a debt from such person to Her Majesty.

The Income-Tax Act (5 and 6 Vict. cap. 35), Schedule A, rule 3, provides that the assessment on profits made by railways shall be made on the profits of the year preceding the year of assessment.

A railway company whose undertaking was in course of construction, and therefore yielded no profit, but which paid annually a sum of interest on its share capital and debenture stock, returned to the Inland Revenue the amount so paid in the year previous to the year of assessment under the Income-Tax Act (5 and 6 Vict. cap. 35), and was assessed thereon. The amount paid in interest in the year of assessment having turned out to be greater than the amount in the previous year, action was raised by the Revenue against the company claiming the assessment upon the difference which had been deducted by the company in paying the interest as a debt due to Her Majesty under the enactment first above recited. *Held* that the company was liable.

The Income-Tax Act (5 and 6 Vict. cap. 35), Schedule A, rule 3, provides—"The annual value of all the properties hereinafter described shall be understood to be the full amount for one year, or the average amount for one year, of the profits received therefrom within the respective times herein limited . . . Third, of iron works, gas works, salt springs or works, alum mines or works, water works, streams of water, canals, inland navigations, docks, drains and levels, fishings, rights of markets and fairs, tolls, railways, and other ways, bridges, ferries and other concerns of the

like nature, from or arising out of any lands, tenements, hereditaments or heritages, on the profits of the year preceding."

The Income-Tax Act 1853 (16 and 17 Vict. cap. 34), Schedule D, provides "That duty shall be chargeable in respect of all interest of money, annuities, and other annual profits or gain not charged by virtue of any of the other schedules contained in the Act."

The Customs and Inland Revenue Act 1888 (51 Vict. cap. 8), sec. 24, sub-sec. 3, provides—"Upon payment of any interest of money or annuities charged with income-tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income-tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge as the case may be, and such amount shall be a debt from such person to Her Majesty, and recoverable as such accordingly, and the provision contained in section 8 of the Act of the thirteenth and fourteenth years of Her Majesty's reign, chapter ninety-seven, now in force in relation to money in the hands of any person for legacy duty, shall apply to money deducted by any person in respect of income-tax."

The Forth Bridge Railway Company were incorporated by the Forth Bridge Railway Act 1873, and were authorised by the said Act to raise a share capital, and to create and issue debenture stock subject to the provisions of The Companies Clauses Act 1863. Further powers were conferred on the company by Acts passed in 1876, 1878, 1879, and 1882. Share capital was raised and debenture stock issued by the company in virtue of their powers. The company's railway was opened for traffic early in March 1890. Prior to that time the company's works were in course of construction and yielded no revenue. Interest was, however, paid upon the debenture stock, and under the Forth Bridge Act of 1882 was also paid on the share capital. For the purposes of assessment for income-tax for the year ending 5th April 1889, the company made a return of the interest paid to shareholders and to holders of debenture stock as shown by their half-yearly accounts ending 30th June and 31st December 1887, the year preceding the year of assessment. This account showed that £62,322, 0s. 3d. had been paid as interest to the shareholders, and £12,672, 14s. to holders of debenture stock. The company was assessed upon the return thus made, and a corresponding amount of tax was paid. As shewn by returns prepared by the secretary of the company, dated 1st August 1889, the actual amount of interest paid in the year ending 5th April 1889 to shareholders was £71,976, 11s. 3d., and to holders of debenture stock £21,344, 13s. 5d. These payments were made under deductions in name of income-tax, the sums deducted being retained by the company.

In these circumstances an action was brought by the Lord Advocate on behalf of the Board of Inland Revenue against the Forth Bridge Railway Company for the sum of £458, 3s. 3d. The pursuer averred that looking to the returns prepared by the secretary of the company dated 1st August 1889, the amount assessed for income-tax was short as regarded the interest paid to shareholders, and debenture holders respectively by £9654, 11s. and £8671, 19s. 5d., and so the duty paid on them respectively was less than the sums deducted by £241, 7s. 3d. and £216, 16s. The company thus, on the whole, for the year ending 5th April 1889 held back from the Revenue duty amounting to £458, 3s. 3d.

The pursuer pleaded—"(1) The money deducted by the company in respect of income-tax on the interest actually paid by them to shareholders and debenture holders during the year ending 5th April 1889, formed forthwith a debt due to the Crown and recoverable as such. (2) The amount sued for being due and resting-owing by the company, decree ought to be given as concluded for, with expenses."

The defenders pleaded—"(2) On a sound construction of the statute the defenders' undertaking falls to be assessed, not under Schedule D of the Income-Tax Act 1853, but under the third rule, No. 3, Schedule A, of the Income-Tax Act (5 and 6 Vict. cap. 35). (3) The defenders having, in compliance with the Commissioners' usual annual request, sent in returns in terms of the said rule for the year preceding 5th April 1889, and these having been accepted by the Commissioners, and the duty assesed duly paid by the defenders, the pursuer is barred from suing for additional duty."

The Lord Ordinary (WELLWOOD) pronounced the following interlocutor:—"Finds that under the statutes founded on, and in particular under sec. 24 (3) of the Customs and Inland Revenue Act 1888 (51 Vict. cap. 8), all money deducted by the defenders in respect of income-tax on interest actually paid by them to shareholders and debenture-holders during the year ending 5th April 1889, formed a debt due and forthwith payable to the Crown: Finds that the sum sued for is the balance of duty thus deducted by the defenders, for which they have not yet accounted after crediting them with payments made under the assessment for the year ending 5th April 1889, in respect of interest so paid to shareholders and holders of debenture stock, and that the said sum is still due and resting owing: Therefore repels the defences, and decerns in terms of the conclusions of the summons: Finds the pursuer entitled to expenses, &c.

"*Opinion.*—Prior to March 1890 the defenders' works were in course of construction and yielded no revenue, and thus there could be no division of profits or gains therefrom chargeable to income-tax as the revenue of the undertaking. But the company out of certain funds raised for the purpose, paid interest on debenture

stock issued by them under the powers conferred by their Acts, and also upon the share capital under the Forth Bridge Act of 1882.

"The claim now made is a claim for income-tax on interest paid by the defenders to the shareholders and holders of debenture stock in the year ending 5th April 1889. The claim is made in respect of section 24, sub-section 3 of the Customs and Inland Revenue Act 1888 (51 Vict. cap. 8), which runs as follows—'(3) Upon payment of any interest of money or annuities charged with income-tax under Schedule D, and not payable or not wholly payable out of profits or gains brought into charge to such tax, the person by or through whom such interest or annuities shall be paid shall deduct thereout the rate of income-tax in force at the time of such payment, and shall forthwith render an account to the Commissioners of Inland Revenue of the amount so deducted, or of the amount deducted out of so much of the interest or annuities as is not paid out of profits or gains brought into charge as the case may be; and such amount shall be a debt from such person to Her Majesty, and recoverable as such accordingly.'

"It appears to me that the interest paid as above mentioned to shareholders and debenture-holders falls within the meaning of this sub-section. It is interest of money charged with income-tax under Schedule D, and not payable out of profits or gains brought into charge to such tax. The company is the person through whom the interest has been paid, and the company has deducted the income-tax effeiring to the payments made by it. That being so, in ordinary circumstances the defenders would be bound to account to the Crown for the amount deducted, not as an assessment, but as a debt. It is not necessary for the Crown to assess for such claims; they are debts due to the Crown and recoverable as such. The person deducting the income-tax acts only as the agent or hand of the Crown, and is bound to account for the duty so deducted.

"The difficulty lies in this. For the purposes of assessment for income-tax for the year ending 5th April 1889, the defenders made a return which included the interest paid to shareholders and holders of debenture stock as shown by their half-yearly accounts ending 30th June and 31st December 1887. In doing so they acted in terms of the third rule, No. 3, Schedule A, of the Income-Tax Act (5 and 6 Vict. cap. 35), according to which the assessment in any year on profits made by railways is made on profits for the year preceding the year of assessment. Now, according to the accounts for the year 1887, it appeared that £62,322, 0s. 3d. was paid as interest to shareholders, and £12,672, 14s. to holders of debenture stock, in all £74,994, 14s. 3d.; whereas in the year ending 5th April 1889 £71,976, 11s. 3d. was paid to shareholders, and £21,344, 13s. 5d. to holders of debenture stock, in all £93,321, 4s. 8d. There was thus paid in interest during the latter year £18,326, 10s. 5d. more than in the year 1887, the duty effeiring to which amounts to £458, 3s. 3d., the sum now sued for.

"The defence is mainly rested on the ground that the defenders have already been assessed for income-tax for the year ending 5th April 1889, on the footing of returns which included interest paid to shareholders and holders of debenture stock as part of the profits in respect of which the assessment was to be made. The defenders maintain that the returns having been accepted by the Income-Tax Commissioners and duly paid thereon, the assessment for the year ending 5th April 1889 has been settled, and that the Crown is barred from making the present claim. The pursuer, I understand, admits that the defenders should not have been assessed in respect of the said interest, but that the duty deducted during the year ending 5th April 1889 should have been paid forthwith as a debt by the defenders to the Commissioners. The pursuer points out, however, that he is not now claiming the full amount of duty deducted from interest paid during the year ending 5th April 1889, but merely the difference between the duty for which the defenders have already been assessed, and which they have paid in respect of interest paid to shareholders and holders of debenture stock calculated on the footing of interest paid in 1887, and the duty deducted by them from interest paid in the year ending 5th April 1889. The amount already paid in name of assessment is imputed towards the total sum claimed as a debt due under section 24 (3) of the Act of 1888.

"In my opinion the Crown is entitled to succeed. Although a mistake may have been committed in making the assessment, the Crown is not affected by objections which might (I do not say would) be pleaded with success against a subject pursuer—*Lord Advocate* v. *Meiklam*, July 13, 1860, 22 D. 1427, and *Lord Advocate* v. *Miller's Trustees*, 11 R. 1046, and I do not think it is now too late for the Crown to insist on immediate payment of a debt which has undoubtedly now become due under the section of the statute which I have quoted."

Counsel for the Pursuer—Young. Agent—David Crole, Solicitor of Inland Revenue.

Counsel for the Defender—C. S. Dickson. Agents—Millar, Robson, & Innes, S.S.C.