billiard room. I think that shows that this idea of the two businesses being run together was as clearly present to the landlord's mind as it was to the tenant's. But then that does not seem to me to further the matter as regards the meaning of the statute. I think when you have the expression "dwelling-house together with offices, courts, yards, and gardens therewith occupied," you necessarily point to something that is an appanage of the dwelling-house, or which is connected with the dwelling-house. I do not say that it is a necessity to the dwelling-house, because the dwelling-house might do with either no offices at all or with fewer offices, but the use of the office must be a subordinate use to the dwelling-house. Now, I do not call the use of the billiard room a subordinate use to the public-house; I call it a co-ordinate use. Accordingly, upon the whole matter, I am of opinion that the Lord Ordinary's interlocutor should be reversed, and that we should find that the Crown is not entitled to aggregate in the value of these premises the value of the billiard room, and that decree should be given to Mr Paterson accordingly.

LORD M'LAREN—I am of the same opinion. I do not think that the billiard room falls under the description of a "dwelling-house with the offices, courts, yards, and gardens therewith occupied." It seems to me that when the house was built the upper flat was designed for separate occupation from the lower, because they have separate entrances. You can only obtain access from the one to the other by going out to the street or going into the courtyard behind. Then the businesses are separate. In this country at least it is not a usual combination to have a billiard room attached to a licensed public-house. I am of opinion that we ought to sustain the claim for return, which is the subject of this action.

LORD KINNEAR—I concur.

LORD PEARSON—I also concur.

The Court pronounced this interlocutor:—

"Recal the said interlocutor [of 7th March 1906]: Find, declare, ordain and decern against the defender conform to the conclusions of the summons: Find the pursuer entitled to expenses, and remit . . ." &c.

Counsel for Pursuer and Reclaimer—M'Clure, K.C.—Macmillan. Agents—Gardiner & Macfie, S.S.C.

Counsel for Defender and Respondent—Solicitor-General (Ure, K.C.)—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, June 21.

FIRST DIVISION.

[Sheriff Court at Airdrie.

HAMILTON & CALDER *v.* CALEDONIAN RAILWAY COMPANY.

Railway—Rates and Charges—Distinguishing Rates—Terminal Charges—Traffic Carried over Railway from One Private Siding to Another—Right of Trader to Specification as to how Charge for Services Made up—"Terminals"—"Special Services"—Railway and Canal Traffic Act 1888 (51 *and* 52 *Vict. c.* 25), *sec.* 33, *sub-sec.* (3).

The Railway and Canal Traffic Act 1888 (51 and 52 Vict. c. 25), section 33 (3), enacts—"The company shall within one week after application in writing made to the secretary of any railway company by any person interested in the carriage of any merchandise which has been or is intended to be carried over the railway of such company, render an account to the person so applying in which the charge made or claimed by the company for the carriage of such merchandise shall be divided, and the charge for conveyance over the railway shall be distinguished from the terminal charges (if any), and from the dock charges (if any), and if any terminal charge or dock charge is included in such account the nature and detail of the terminal expenses or dock charges in respect of which it is made shall be specified."

Held (1) that the above-quoted enactment was not limited to "station-to-station" rates but was also applicable to "siding-to-siding" rates; and (2) that "terminal charges" as therein used included not only terminal charges proper, *i.e.*, "terminals" in the sense of the Railway Rates and Charges No. 19 (Caledonian) Railway, &c., Order Confirmation Act of 1892 (the Act regulating the right of the railway company to charge), but also charges for services which under the nomenclature of the Act of 1892 would be "services" as distinguished from "terminals."

Hamilton & Calder, boilermakers, Vulcan Boiler Works, Coatbridge, with the concurrence of the Procurator-Fiscal there, brought a complaint in the Sheriff Court at Airdrie under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, the Criminal Procedure (Scotland) Act 1887, and the Railway and Canal Traffic Act 1888, against the Caledonian Railway Company, charging them with an offence under section 33 (3), of the Railway and Canal Traffic Act 1888 (51 and 52 Vict. c. 25), in respect that they had failed, when called upon to do so, to render an account in which a certain charge for goods carried was divided, and the charge for conveyance over the railway distinguished from the terminal charges, and the nature and details of the terminal expenses or charges

therein contained specified, whereby the Caledonian Railway Company had become liable on summary conviction to a penalty not exceeding £5. The charge made was in respect of the carriage of plates of the weight of 9 tons 2 cwts. from Vulcan Boiler Works, Coatbridge, to the Glengarnock Iron and Steel Company's siding, Ardeer Iron Works, Stevenston, for which the Railway Company charged the sum of £3, 8s. 3d., being at the rate of 7s. 6d. per ton, and which rate included a charge of 1s. 7¼d. per ton for terminal charges (or as subsequently described, balance of charge).

The respondents stated, *inter alia*, the following objections to the complaint:—"(3) The charge in question being made by the respondents in respect of special services rendered by them to the complainers at or in connection with a siding not belonging to the respondents in terms of section 5 of the Schedule of Maximum Rates and Charges referred to in the Provisional Order scheduled to and confirmed by the Railway Rates and Charges No. 19 (Caledonian Railway, &c.) Order Confirmation Act 1892, the provisions of sub-section (3) of section 33 of the Railway and Canal Traffic Act 1888 are not applicable thereto. (4) The charge in question not being a terminal charge within the meaning and application of sub-section (3) of section 33 of the Railway and Canal Traffic Act 1888, the respondents are not bound to specify the nature and detail of the expenses or charges in respect of which it is made."

The Sheriff-Substitute (GLEGG) repelled the objections, and after a proof found the respondents guilty of the contravention charged, and imposed a penalty of £2, 10s.

The Railway Company appealed on a case stated.

From the case it appeared that "on 14th April 1905 the respondents sent to the appellants the following letter:—'In terms of section 33, sub-section (3), of the Railway and Canal Traffic Act 1888, we hereby request you to render to us an account in which the undernoted charge made by you for the carriage of the undernoted merchandise consigned by us is divided, distinguishing the charge for conveyance from the terminal charges and specifying the detail and nature of the terminal expenses or charges, viz.—

'1904.

'Sept. 1st. From Vulcan Boiler Works to the Glengarnock Iron and Steel Company's siding, Ardeer Iron Works, Stevenston.

'Plates 9 T. 2 C.—7s. 6d. . £3 8 3.'

"The appellants replied by letter of 19th April in the following terms:—'With reference to your letter of 14th inst., addressed to Mr Blackburn, secretary of this company, I beg to state that the rate in question, viz., 7s. 6d. per ton, is for traffic in Class C, and is made up as follows:—

'Conveyance . . 5s. 10¾d. per ton.
'Terminals . . . 1s. 7¼d. ,, '

"The appellants refused to give further information."

[At the hearing counsel for the appellants stated that the word "terminals" in the Railway Company's letter of 19th April had been wrongly used, and that what was meant was "balance of charge."]

The goods had been carried from a private siding of the respondents to a private siding of the Glengarnock Iron and Steel Company, and with respect to the nature of the services rendered the case stated:—"The entire haulage inside and outside the respondents' boundary was done by an engine of the appellants. The respondents loaded the trucks and no services of loading or covering were performed by the appellants. . . . The appellants' siding, which connects with the respondents', enters the appellants' system at an awkward place. It comes in at the junction of two main lines, on both of which there is a large amount of traffic. . . . The charge for 'terminals' is made up of—(1) Provision of siding so far as on Caledonian property (31 yards), including gate. (2) Maintenance of siding so far as on Caledonian property (31 yards), including gate. (3) Signalling in vicinity of private siding and working points for private siding and other sidings. (4) Taking empty waggons from station to private siding. (5) Use of waggons on private siding. (6) Engine working on private siding. (7) Use of sidings in vicinity of private siding for shunting purposes. (8) Working between siding and station (line and accessories, engine-power, waggons, and staff). (9) Accommodation and marshalling at station. (10) Clerkage and checking, including office accommodation and foreman porter's visits to private siding when made. (11) General supervision, being supervision by stationmaster at Coatbridge. (12) Provision of chains and blocks when required. (13) Taking chains and blocks from station to siding. . . . At . . . the beginning of the private sidings of the Ardeer Iron Works the trucks are taken over by an engine belonging to the Ardeer Iron Works, and the appellants are not required to supply further haulage under their contract. . . . The charge for 'terminals' at this end is similar to that at the other, and is made up of (1) accommodation and shunting at Stevenston Station or junction at Ardeer Branch, as the case may be, inclusive of signalling. (2) Working from branch junction to station and *vice versa* in certain cases (line and accessories, engine-power, waggons, and staff). (3) Use of waggons on private lines. (4) Engine working on private lines. (5) Clerkage and checking, including office accommodation and number taking. (6) General supervision. (7) Use of chains and blocks when required on private lines, and returning same. At the proof Archibald Hillhouse, the general goods manager for the appellants — who wrote the letter of 19th April—explained that by 'terminals' he meant charges for services as described above. He said these were made under section 5, sub-section (1), of the Schedule of Maximum Rates and Charges, &c., contained in Appendix to the Caledonian Rates and Charges Act 1892. It

was admitted that the charge of 1s. 7½d. was not made up from items for work actually done on the occasion in question, but was a general or overhead charge."

The following questions of law for the opinion of the Court were submitted by the Sheriff-Substitute:—"(1) Do the provisions of section 33 (3) of the Railway and Canal Traffic Act 1888 (51 and 52 Vict. cap. 25) apply to charges or expenses for the services above specified, or any of them? (2) Are the services rendered by the appellants to the respondents, in respect of which the foresaid charge of 1s. 7½d. has been made, services rendered at or in connection with sidings not belonging to a railway company within the meaning and application of section 5 of the Schedule of Maximum Rates and Charges, &c., annexed to the Railway Rates and Charges No. 19 (Caledonian Railway, &c.) Order Confirmation Act 1892, and if so, are they outwith the application of section 33 (3) of the Railway and Canal Traffic Act 1888? (3) In the circumstances above set forth was I right in convicting the appellants of the contravention charged?"

Argued for the appellants—Section 33 of the Railway and Canal Traffic Act 1888 applied only to station-to-station rates, where the work was done on the railway company's premises. It did not apply to rates from one private siding to another. The section which dealt with siding-to-siding rates was section 34. That being so, sub-section 3 of section 33 was not applicable—*Pelsall Coal and Iron Company* v. *London and North Western Railway Company*, January 12, 1891, 7 R. and C. Traffic Cases, 36. "Terminal charges" were defined in section 55 of the Act, and did not include services rendered at private sidings but only at stations, sidings of the railway company, &c. Provision as to furnishing particulars of charges for goods was originally made by section 17 of the Regulation of Railways Act 1868 (31 and 32 Vict. cap. 119), and later by section 14 of the Regulation of Railways Act 1873 (36 and 37 Vict. cap. 48). These did not apply to private sidings. The Act of 1888 was to be read along with the previous statutes and so its corresponding section, *i.e.*, 33 (3), did not so apply. The Sheriff-Substitute had construed the word "terminals" as including all services rendered at the termination of the journey *i.e.*, everything except conveyance. That was a wrong construction. The statutes distinguished between (1) "station terminals"; (2) "service terminals"; and (3) "special services"—*vide* the Railway Rates and Charges No. 19 (Caledonian Railway) Order Confirmation Act 1892 (55 and 56 Vict. cap. 57), Schedule "Maximum Rates and Charges," sections 1, 2, 3, 4, and 5. (An Order in identical terms is printed in Ferguson's Scottish Railway Statutes at p. 420). As to the history of "terminal charges," reference was made to Deas on Railways (Ferguson's Ed.), p. 549 *et seq.* In "terminals" proper the terminus was always a station or a wharf, not a private siding. Section 24 of the 1888 Act provided that the "terminal charges" were to be stated, but these charges meant charges made at stations provided by the Railway Company, and not such a might be made at private sidings. What had been charged for here was "special services," not "terminals." Accordingly, even if sub-sec. (3) did apply to "siding-to-siding" rates, the appellants were not bound to give the information asked for seeing they were not bound to do so in the case of "special services" but only in the case of "terminals" properly so called. "Terminal station" was defined in section 25 of the Schedule (*ut supra*). Sidings were not terminal stations. Reference was also made on this subject to Boyle and Waghorn on Railway and Canal Traffic, vol. ii, pp. 80 and 127. Section 5 of the Schedule annexed to the Railway Rates and Charges No. 19 (Caledonian) Order Confirmation Act 1892 provided for differences being settled by arbitration, and the respondents ought to have applied to the Board of Trade for the appointment of an arbitrator. *Vide* also the Railway and Canal Traffic Act 1894 (57 and 58 Vict. cap. 54), secs. 3 and 4.

Argued for respondents—It was the interest of the trader to have the charges detailed, as he might do the work more cheaply himself. Section 55 of the Act of 1888 (*ut supra*) defined "terminal charges" as including charges for services rendered at stations, sidings, &c. If private sidings were not meant to be included the Act would have said so. Private sidings were also dealt with in the Report by Lord Balfour and Sir C. Boyle to the Board of Trade (see Report in Boyle and Waghorn on Railways and Canals, vol. ii, p. 118), on which the Act of 1892 proceeded. The charges in question included charges for "terminals" and charges for "special services." Sub-section (3) of section 33 was explicit in its terms, and entitled the trader to details of (1) conveyance rates, and (2) terminal charges, *i.e.*, everything not covered by the conveyance rate, and that whether the charges were for "station" services or "special" services. Both section 34 of the 1888 Act (which corresponded to section 14 of the 1873 Act) and section 33, sub-section (3), applied to places at which goods were received, which need not necessarily be "stations." The terms of the statute had to be obeyed and the Sheriff was therefore right in convicting—*New Union Mill Company* and *Great Western Railway Company*, April 14, 1896, 9 R. and C. Traffic Cases, p. 152. If the appellants thought they were unfairly treated they could resort to the Railway Commissioners, who had jurisdiction over private sidings.

At advising—

LORD PRESIDENT—The Caledonian Railway Company having carried a consignment of iron plates from the Vulcan Boiler Works, Coatbridge, to the Glengarnock Iron and Steel Company's siding, Ardeer Iron Works, Stevenston, the respondents, who carry on business at the said Vulcan Works, applied on 14th April 1905 for a specification of how the rate of 7s. 6d. per

ton charged was made up. This demand was based on the 3rd sub-section of the 33rd section of the Railway and Canal Traffic Act 1888, which is in these terms:— . . . (*quotes Act supra in rubric*) . . .

The Caledonian Railway Company replied that the rate was made up of 5s. 10¾d. per ton for conveyance and a balance of 1s. 7¼d., but refused to give further specification of the nature and detail of the expenses included in the said balance of 1s. 7¼d. The respondents raised a prosecution under sub-section 7 of the same section for non-compliance with the provisions of the section. The Sheriff-Substitute convicted the Railway Company, and the present case is an appeal on a stated case against that conviction.

The Railway Company in their original letter represented the 1s. 7¼d. as a charge for terminals. They subsequently explained that that word was used by inadvertence, and the case has accordingly been taken as if the word had been as I have used it, viz., balance of charge. The real defence of the Railway Company arises out of the circumstances in which the traffic is carried. These circumstances are fully detailed in the case, but so far as necessary to raise the argument they may be very briefly stated. The traffic in question originates on a private siding belonging to the respondents. The Railway Company do the haulage on that siding and also provide a short piece of line (some 30 yards) which connects the siding with the main line. The junction to the main line necessitates extra signalling. They also do various services in connection with the loan of waggons and returning empties. The traffic is then carried over the railway to its destination at another private siding, where the arrangements are practically the same. It is not loaded or unloaded at any station of the Railway Company, the journey, as above explained, beginning on one private siding and ending at another.

The right of the Railway Company to charge is now regulated by the Railway Rates and Charges Caledonian Railway Order Confirmation Act of 1892.

That Act specifies *maxima* for (1) conveyance, (2) station terminals, and (3) service terminals. It also allows charges for special services, as detailed in section 5 of the schedule, such charge to be a reasonable sum in addition to the tonnage rate, and to be determined in the case of difference by an arbiter appointed by the Board of Trade.

The defence stated by the Railway Company is twofold. They say that sub-section (3) of section 33 of the Act 1888 does not apply to traffic other than from station to station, and secondly, that the requirement as to "nature and detail" is confined to terminal charges, and that the charges here are not terminal but special.

As regards the first point, so far as the mere language is concerned, it must be conceded that the traffic in question is "carried over the railway," and therefore the section would seem to apply. The Railway Company really rest their argument on the place of the sub-section which is incorporated in section 33, the other sub-sections of which deal they say with station to station traffic, while it is not repeated in section 34 which deals with places other than stations.

The position of sub-section 3 is from the point of view of draughtmanship in truth most inartistic, but I do not think that that of itself can alter its meaning, especially when one considers that it has truly nothing to do with the rest of section 33. To bring this out clearly it is necessary to go back and trace the legislation on these matters.

Under the Act of 1845 it was provided by section 86 that a list of tolls should be exhibited on a board in or near each station. These tolls were, however, tolls for conveyance only. In nearly all special Acts, besides the toll clause specifying maximum charges for conveyance, there was another clause which afterwards came to be known as the terminal charge clause, which allowed the company when it acted as a carrier to make other charges. The phraseology varied, but an ordinary form, after specifying certain services, such as loading, unloading, collection, delivery, &c., wound up with the words, "and other services incidental to the business of a carrier." Accordingly, it was practically decided by the case of the *Scottish North-Eastern Railway Company* v. *Anderson*, 1 Macph. 1056—a similar opinion having been expressed in the English case of *Garton* v. *Bristol and Exeter Railway Company*, 30 L.J., Q.B. 273—that the requirements of section 86 were limited to tolls proper, *i.e.*, to the use of the railway as a railway, and that they did not extend to charges made by a railway company as carrier.

So stood the law until 1868. By this time the modern development of railways was fully accomplished, that is to say, the old idea that the railway company was to let out the line as a highway to others was practically exploded and they acted in every respect as carriers. By section 15 of that Act a list of passenger fares was bound to be exhibited in stations. But by section 17 a new provision entirely was introduced, and the person who sent goods was entitled to get from the railway company a splitting up of every charge made into two heads—(1) use of railway, *i.e.*, the proper toll plus use of carriage and locomotive power, or in one word conveyance proper; and (2) charges for loading or unloading, covering, collection, delivery, and other expenses, but without particularising the several items.

It will at once be seen that a person getting this specification could compare the charge under (1) with the toll proper on the board, and he could then consider whether, first, the difference between the the maximum on the toll board and the charge under (1), and, second, the charge under (2), was so "unreasonable" as to permit him to go to law.

In 1873 a new departure ensued. The body known as the Railway Commissioners was established, and the cognisance of

many matters hitherto left to the ordinary tribunals was entrusted to them. Of these matters the principal were overcharge and undue preference. Accordingly, section 14 of the Regulation of Railways Act, 1873, provided for the publication of rates for goods at all stations. This was really an amendment of the old section as to tolls, coming abreast with the *de facto* position of the company acting as carriers. It provided for rates as a whole being published, and it gives a power on application to the Railway Commissioners to have these rates split. But it did not deal with the question of the individual trader's right to have the charge for his own consignments analysed. That remained on the 17th section of the 1868 Act, and it did not deal with passenger fares which had been sufficiently dealt with by the 15th section of that Act.

In the portion of the section providing for the rate to be split, the distinction is made between rates for conveyance and "other expenses."

By section 15 another important alteration is made. By it the Commissioners are made the judges of what is a reasonable sum for "terminal charges" instead of leaving it to the courts of law.

Then came the Act of 1888. By it the Railway Commissions were reorganised as the Railway and Canal Commissioners, and various amendments of the law were introduced. When we come to section 33 we find, first of all, a provision for the publication at stations of the general classification of merchandise. It will be observed that this is in supplement and not in lieu of the provisions of section 14 of the Act of 1873, for a general classification is not a rate. Several of the other sub-sections are exegetical of this. But two sub-sections have to do with quite other matters. Sub-section 6 provides for increase of charges, and enacts that a certain notice must be given before an increase can take effect, even although published as required by section 14 of the Act of 1873. Then there is sub-section 3. Now, sub-section 3 has nothing to do with publication in general, or with the Act of 1873; it is truly an amendment of section 17 of the Act of 1868. It seems to me, therefore, that no argument can be drawn from its position. If it had truly to do with the other parts of the section then an inference might be drawn from its non-repetition in section 34, which deals with the public exhibition of rates which are not from station to station. But as it is, sub-section 3 ought truly to have been a separate section, and bears no more relation to the other parts of section 33 than it does to section 34.

There is the further consideration that so far as the reason of the thing goes it seems just as important for the trader to know the component parts of a siding-to-siding rate as it is to know those of a station-to-station rate.

Turning now to the second argument, it would be of great force if the phraseology to be interpreted depended upon the terms of the Confirmation Act of 1892. By that Act a clear distinction is made between terminals—divided into station and service and special services. As to terminals proper, a maximum is fixed; as to services no fixed maximum is required. The reason is obvious, and is to be found clearly expressed in the lucid report by Lord Balfour of Burleigh and Sir C. Boyle to the Board of Trade which was the foundation of the various orders promulgated; and it is that special services vary so infinitely with circumstances that a maximum is not possible, whereas the terminals proper are sufficiently well known as to admit of maxima being fixed. But the question does not depend on the phraseology of the Act of 1892, but upon the sense in which "terminal charge" was used in the Act of 1888.

The Act contains a definition which does not help much in the question. It is this—"The term 'terminal charges' includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes, and other similar matters, and of any services rendered thereat."

It is obvious that this definition is inclusive and not exclusive, and moreover the words "sidings . . . and other similar matters" are of such a general character as to leave it doubtful whether it applies only to sidings owned by the railway company.

I am unable to say when the expression "terminal" was first used in any Act of Parliament, because that would involve an examination of all the different Special Acts. But it is clear that at least by 1873—and so far as brought to my notice that is the first public Act in which it is used—the expression had a well-defined meaning, because section 15 uses it as a known phrase which it *in gremio* explains as tantamount to loading, unloading, covering, collection, delivery, and "other services of a like nature." I think, therefore, that we may well assume that terminal charges in section 33, sub-section 3, of the Act of 1888, meant the same as terminal charges in the Act of 1873, sec. 15.

Now it is quite certain that by judicial decision the charges for services which, under the nomenclature of the Act of 1892, would be services as distinguished from terminals proper, fell under the description of terminal charges in section 15 of the Act 1873. For the Commissioners were invoked in many cases to regulate them. A whole series of cases will be found in the 4th vol. of The Railway and Canal Traffic Cases, and in one at least, *Neston Colliery Company* v. *London and North Western Railway Company*, the actual point seems to have been specially raised, for I find on page 261 the following passage:—"A further objection made to our jurisdiction is that section 15 is limited to fixing the amount to be paid for an admitted terminal service, and that if the nature of the service is questioned there is nothing for us to determine. But the scope of the section is not so limited as this view of it supposes. As its express language shows, it deals with terminal charges, making the question not one of definition of terminal service, but whether any given service performed is one for which a terminal charge can be made, and

if as to the particular services for which the joint companies claim to make or to be entitled to make such charges, any of these services should appear to us to be incidental to conveyance, and covered therefore by the mileage rate, or not to be services of the kind to which the power of the companies to make terminal charges applies, we think we are authorised by our Act to decide that in such cases the rates for conveyance cannot be increased by the addition of terminal charges."

It is true that the actual decision on the merits in the series of cases cannot be taken to be law, because they were all reviewed in the case of *Hall & Company*, 15 Q.B.D. 505. But that very case, though altering many of the points on the merits, necessarily confirms the jurisdiction, and in one particular item affords an instance of a charge for a service which under the 1892 nomenclature would not be a terminal, being held and adjudicated on as a "terminal charge." I refer to the conveyance of chalk from Stoat's Nest, in which case (page 507) no use was made of the company's sidings, but the applicants had a private siding, whereas the rate charged exceeded the conveyance maximum (page 511). And finally, as to *Hall & Company's* case, though an appeal in that case from the Divisional Courts was held incompetent, yet the decision of Mr Justice Wills and Mr Justice Manisty was held to be sound and followed by the Court of Appeal presided over by Lord Halsbury in the case of *Sowerby & Company* v. *Great Nothern Railway Company* (7 Railway and Canal Traffic Cases, 156).

It is further on principle, I think, impossible to doubt that the decision was good. For in 1873 it is certain that, as was decided by the House of Lords in *Gidlow's* case (7 E. & I., A.C. 517), a railway company could only charge either for (*a*) conveyance proper, or (*b*) for services incidental to the business of a carrier, and it is also certain that while all Special Acts contain maxima for (*a*), but few did for (*b*). When therefore the Legislature in 1873 proposed to allow the Commissioners to become judges of what were reasonable charges under (*b*), it is extremely unlikely that the scope of the Commissioners' jurisdiction would be less than the scope of the railway's power to charge—there being no means of discriminating one service from another, which fell under the generality of the description "services incidental to the business of a carrier."

I am therefore of opinion that the 3rd sub-section of the 33rd section of the Act of 1888 used the word "terminal charge" in the same sense as the Act of 1873, and that it includes not only "terminals" proper in the nomenclature of 1892 but also special services.

The result is that in my opinion the Sheriff-Substitute was right to convict, and the appeal ought to be refused. But I think it necessary to append to my opinion one portion of the Sheriff-Substitute's note:—"The Sheriff is not required under the 1888 Act to consider the technical question what details should be supplied. The Act simply says that they shall be supplied, and I suppose if a railway company made an *ex facie* reasonable specification of details that a Sheriff would hold that the Act had been complied with. If the charges so detailed were unsatisfactory, then the trader would have his ultimate remedy under the 1892 Act. In fact the 1888 Act and the 1892 Act work together, and the final arbiter as to the propriety of the charges is not the Sheriff but the Board of Trade." With that passage I entirely agree.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court answered the third question in the case in the affirmative.

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

Counsel for the Respondents—Hunter, K.C.—Mercer. Agents—Gray & Handyside, S.S.C.

Thursday, June 21.

FIRST DIVISION.

[Sheriff-Substitute at Forfar.

MILNE (CHRISTISON'S TRUSTEE) *v.* CALLENDER-BRODIE.

Arbitration—Procedure—Plea Prejudicial to Arbitration Stated after Arbiter has entered upon Arbitration—Competency—Agricultural Holdings (*Scotland*) *Acts* 1883 *and* 1900 (46 *and* 47 *Vict. c.* 62, 63 *and* 64 *Vict. c.* 50).

In an arbitration under the Agricultural Holdings (Scotland) Acts 1883 and 1900, the proprietrix, after the arbiter who had been nominated by the Board of Agriculture had entered upon the arbitration and considered the claim and counter-claim stated, desired to withdraw her counter-claim. The arbiter being in doubt as to whether she could competently do so, framed a case to the Sheriff-Substitute under rule 9 of Schedule II of the Agricultural Holdings (Scotland) Act 1900 asking his opinion on the matter. Thereupon, on the crave of the proprietrix, certain questions equivalent to pleas prejudicial to the arbitration were added. These had not been raised in the pleadings before the arbiter, although objections to a similar effect had been stated to the nomination of an arbiter. Objection was taken to the competency of the questions at that stage of the case, the proper and only remedy having been, as maintained, to have interdicted the arbiter from proceeding.

Held that the questions could competently be considered.

Observations (*per* the Lord President) as to rules of pleading in arbitrations.