actually occurred, a purchaser claimed successfully to be relieved from his purchase of part of a sequestrated estate because the bankrupt had appeared at the auction without the knowledge of his trustee and had bid for the property—*Anderson* v. *Stewart*, Dec. 16, 1814, F.C. Would the purchaser have been listened to if not content with being relieved of his bargain he had tried to set up an imaginary purchase by him at the upset price?

The view which I have expressed as to the incompetency of the remedy claimed in the present case derives support from the opinions of the Judges in the case of *Shiell* v. *Guthrie's Trustees*, 1874, 1 R. 1083, 11 S.L.R. 625. I cannot, however, agree with the Lord Ordinary in regarding that case as deciding that Mr Buchanan was entitled to bid at an auction where he himself was one of the exposers. In that case certain testamentary trustees were the exposers and the sole exposers, and the two residuary legatees who purchased the property at the auction were under no known disability which precluded them from purchasing. The only other case to which I need refer is *Faulds* v. *Corbet*, 1859, 21 D. 587—a decision strongly founded on by the pursuer. In that case, which was a judgment on relevancy, testamentary trustees exposed a property for sale at an upset price more than equivalent to the money which they required to raise in order to provide for certain charges. So far as appears from the report, the trustees acted in the matter, not as agents for the sole residuary legatee, but in pursuance of a duty committed to them by the testator. The Court took the view, however, that as the residuary legatee was entitled to receive the price obtained at the sale so far as exceeding the upset price he was virtually the exposer. If on the facts averred the Court was entitled to identify the residuary legatee with the exposers, as to which I reserve my opinion, it followed that the purchase by the former was fictitious. The pursuer claimed that the subjects had been sold to him, not at the amount of his highest bid, but at the amount of his lowest bid, namely, the upset price. The Court sustained the competency of the remedy claimed. In this case, however, as in *Grey's* case (*cit.*), the pursuer's demand inflicted no injustice upon innocent third parties. This decision accordingly does not help the pursuer. Founding upon certain expressions in the opinion of the Court in *Faulds'* case (*cit.*), the pursuer's counsel argued that in a sale by auction the exposer is under an implied contract to sell the property to the highest genuine offerer. If such were truly the contract the Court would be compelled to enforce it in every case, without regard to the consequences to innocent third parties, and irrespective of the question whether the seller was or was not to blame for the competition having proved abortive. I prefer to think that the exposer's obligation is in every case conditional upon the regularity and legality of the proceedings at the auction, although where he himself was in fault he may be personally barred from taking advantage of the fact.

The only point that remains to be noticed is the failure of the debtor in the bond (now represented by two liquidators) to appear and oppose the pursuer's demand that he should be treated as having purchased the property at £4000. The other creditors, however, in the bond have a clear interest to resist this demand, and I do not think that they are in any way precluded from doing so.

I accordingly think that the Lord Ordinary's interlocutor should be affirmed.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for the Pursuer (Reclaimer)—Christie, K.C.—Gentles. Agents—Weir & Macgregor, S.S.C.

Counsel for the Defender (Respondent) R. C. Buchanan—Horne, K.C.—Ingram. Agent—J. George Reid, Solicitor.

Counsel for the Compearing Defenders (Respondents) — MacRobert. Agents — Pringle & Clay, W.S.

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*Wednesday, November* 15.

## FIRST DIVISION.

[Lord Hunter, Ordinary.

## NORTH BRITISH RAILWAY COMPANY *v.* NIDDRIE AND BENHAR COAL COMPANY, LIMITED.

*Railway—Carriage of Goods—Contract—Rates—Construction of Agreement with Trader.*

One of several traders who all shipped coal from the same ports and had their goods carried at a group rate, claimed to have his carried at a reduced rate owing to his position nearer the docks. After many years of controversy, during which the trader had obtained some concession, though insufficient in his view, an agreement was made which, after dealing with connections, sidings, &c., provided—"(4) That the rate for coal to Leith and Granton for shipment be reduced to 9½d. per ton for coal in railway waggons, and 7½d. in traders' waggons, and that these rates be entered in the railway company's rate books, and be operative as from 1st October 1912. . . . (7) That for a period of ten years this company (the trader) will not directly or indirectly assist in the promotion of any new lines to Leith Docks (or other parts) such as, for instance, were embraced in the Lothian Railways Bill, and will continue during that period to give the railway company their traffic as heretofore." After the date of the agreement a general rise in rates took place, and the railway company raised the rates of all the traders in the district and added ¼d. per ton to the rates in the agreement. The trader refused to pay the increase, and the railway company sued him therefor. *Held* that the agreement did

not fix the trader's rate absolutely, but merely fixed a rate for that trader relative to the rates of the other traders in the district, and that the period of ten years in clause 7 was not to be read into clause 4 of the agreement.

The North British Railway Company, *pursuers*, brought an action against the Niddrie and Benhar Coal Company, *defenders*, concluding for decree for £533, 6s. 7d., being the difference between the cost of carriage of coal by the pursuers for the defenders from Niddrie to North Leith, South Leith, and Granton at the rate of 9¾d. per ton in railway waggons and 7¾d. per ton in traders' waggons, and the cost at 9½d. per ton and 7½d. per ton.

The defenders pleaded—"2. The pursuers not being entitled to charge the defenders higher rates than those specified in the letter of 25th October 1912, the defenders are entitled to absolvitor. 3. The pursuers' averments being unfounded in fact, the defenders are entitled to absolvitor."

*The letter of agreement* from the defenders to the pursuers was in the following terms:—"*Edinburgh, 25th October* 1912. Dear Sir—I am instructed by my director to say that as the result of the recent interviews and correspondence between us, they understand the following arrangement to have been arrived at:—1. That the Railway Company undertake to make at their own expense the new connection into this company's storage sidings, we providing the necessary ground for extension of new sidings beyond the Railway Company's property and to obtain the landlord's consent to the raising of the service roadway. 2. That the Railway Company agree to give a connection from their new lines for a coal depot to be made near the Jewel Bridge, this company paying a charge at the rate of one farthing (¼d.) per ton for minerals passing over this connection to the depot, the working of this traffic by us to be as mutually arranged. 3. That as the railway propose to discontinue the use to this company of two of the sidings hitherto used for their traffic the Railway Company in lieu thereof will give similar use of two of the sidings recently laid down further west, and will consider the question of allocating some more of these sidings for placement of this company's traffic. 4. That the rates for coal to Leith and Granton for shipment be reduced to 9½d. per ton for coal in railway waggons and 7½d. in traders' waggons, and that these rates be entered in the Railway Company's rate books and be operative as from 1st October 1912. 5. That if the Railway Company fail to obtain the consent of the Caledonian Railway Company so far as necessary to the above arrangement, the Railway Company undertake that an equivalent to the reduction in rates will be assured to this company. 6. That the above arrangement settles the existing differences between the two companies as regards rates and facilities as discussed in London in connection with the Lothian Railways Bill of last session, but does not include any question as to thirled waggons or the general question of traders' waggons. 7. That for a period of ten years this company will not directly or indirectly assist in the promotion of any new lines to Leith Docks (or other parts) such as, for instance, were embraced in the Lothian Railways Bill, and will continue during that period to give the Railway Company their traffic as heretofore. I am further instructed to request you to confirm this arrangement in course. —Yours truly, for the Niddrie and Benhar Coal Company, Limited, T. ROBIN KERR, secretary."

The *facts* of the case appear from the opinion of the Lord Ordinary (HUNTER), who after a proof pronounced this interlocutor—"Repels the pleas-in-law for the defenders, and decerns against them in terms of the conclusions of the summons."

*Opinion.*—"In this action the North British Railway Company sue the Niddrie and Benhar Coal Company, Limited, for payment of £533, 6s. 7d. alleged to be due in respect of rates for the carriage over the pursuers' railway system of coal belonging to the defenders from Niddrie to South Leith, North Leith, and Granton during the period from July 1913 to November 1914. The coal was carried partly in waggons belonging to the pursuers and partly in waggons belonging to the defenders. According to the pursuers' case the railway rate for the defenders' coal carried in Railway Company's waggons was 9¾d. per ton and in traders' waggons 7¾d. per ton. The defenders have paid for the coal carried during the period referred to at the respective rates of 9½d. and 7½d. The ¼d. difference represents a general increase that was put by the pursuers upon coal rates in Scotland in consequence of the increased cost of working railway traffic. The increase came into operation from 1st July 1913.

"It is maintained for the defenders that they are not liable to pay this increase in consequence of an agreement come to between them and the pursuers, under which they claim to be entitled to have their coal carried at the fixed rate of 9½d. and 7½d. for a period of ten years from October 1912. That agreement was the result of certain negotiations and correspondence between the parties. Its terms are to be found set forth in the letter dated 25th October 1912 and quoted on record, sent by the defenders' secretary to the general manager of the pursuers' railway company. I do not think the pursuers disputed the defenders' contention that that letter may be treated as binding upon the parties in the sense in which a signed and sealed document would have been.

"Before considering the proper interpretation to be given to the agreement—which is the real question in the case—I may refer briefly to the circumstances which gave rise to the arrangement. As appears from the evidence of Dr Moore, the chairman of the board of directors of the defenders, that company had for many years complained that the rates charged to them were excessive. About twenty years ago they were charged what is known as the group rate of 1s. 2d. a ton and 11½d. a ton for coal carried in company and traders' waggons

respectively, applicable to all collieries in the Lothians. The great bulk of the defenders' coal is shipped at Leith or Granton. Geographically the defenders' pits are situated much nearer to these ports than other collieries which paid the same rates. In 1896 or 1897 a change was made under which the defenders' coal was carried at rates of 11½d. and 9½d., as contrasted with the group rates of 1s. 2d. and 11½d. The defenders, however, did not consider that this reduction sufficiently reflected their favourable geographical position. At the same time the owners of collieries in the Lothians generally were dissatisfied with the rates charged and the traffic facilities afforded by the pursuers.

"In 1911 five of the Lothian coalmasters, one of these being the defenders, joined together in order to promote the Lothian Railways Bill of 1911. That bill was tried in the session of 1911-12. Generally speaking, the object of the bill was to get authority for the construction of an independent railway which would serve the Lothian collieries and convey their traffic to Leith Docks. In the course of the proceedings the Chairman of the Committee suggested a conference with a view to the adjustment of the differences between parties. An attempt to give effect to this suggestion failed, and the bill was thrown out in June 1912. Thereafter meetings took place between the coalmasters and the pursuers and between the pursuers and defenders. Within a month or six weeks of their bill being thrown out, the coalowners considered the question of promoting another bill. The pursuers, however, as a result of independent negotiations with the defenders, got them to withdraw from their proposed promotion of the coalowners' bill on the terms embodied in their letter containing the agreement.

"The first three heads of the agreement deal with sidings, connection to sidings, and the terms upon which these facilities are to be given. The fourth article, which deals with rates for carriage, is in these terms— "... [*quotes, v. sup.*]... The fifth article provides for the pursuers obtaining the consent of the Caledonian Railway to the agreement. The sixth article explains the extent to which the disputes between parties are settled by the agreement. By the seventh article it is provided 'that for a period of ten years this company will not, directly or indirectly, assist in the promotion of any new lines to Leith Docks (or other parts) such as, for instance, were embraced in the Lothian Railways Bill, and will continue during that period to give the Railway Company their traffic as heretofore.'

"The contention for the defenders is that the time limit of ten years qualifies the whole agreement. From a study of the negotiations leading up to the concluded agreement it appears that parties were agreed upon the previous articles of the agreement, and that the time limit was introduced in the interest of the defenders to make it clear that their freedom of action was not to be indefinitely curtailed. I do not think that as a matter of construction it is necessary to read the time limit into the preceding articles of the agreement. It is said that this view makes the preceding articles operative without limit of time. It does not appear to me that I need decide this question. The real question is whether or not the fourth article of the agreement stereotypes a rate either for ten years or in perpetuity. In my opinion it does not. The defenders say that this reading of the article makes the rates mentioned in article four alterable at pleasure and confers no benefit upon them. I do not think that this argument is sound. By section 14 of the Regulation of Railways Act 1873 (36 and 37 Vict. cap. 48) it is provided that a railway company shall keep a book or books showing every rate for the time being charged for the carriage of traffic other than passengers and their luggage. If the railway company increase the rates so appearing against a trader or traders and complaint is made to the Railway and Canal Commission against the increase as unreasonable the *onus* is put upon the company by section 1 (1) of the Railway and Canal Traffic Act 1894 (57 and 58 Vict. cap. 54) of proving that the increase of the rate or charge is reasonable, and for that purpose it is not sufficient to show that the rate or charge is within any limit fixed by an Act of Parliament. A trader therefore derives a great advantage by having a lower rate entered in the rate books of the railway. As I read article 4 of the agreement it gives the defenders right to have the rates mentioned entered in the rate books, but the lower rates are subject to such alterations as might have been made upon the higher rates. In the present rate the increase of a ¼d. has been made upon the rates for all coal carried where the rate is under 1s., the increase where the rate is between 1s. and 1s. 6d. being ½d. The relative position of the defenders to their competitors in trade in the Lothians has not been in any way prejudiced. I assume that it is within the power of a railway company to stereotype either for a lengthened period of time or in perpetuity the rate at which it will carry merchandise for a particular trader, but in view of the statutory provisions against giving preferential treatment to one trader over his competitors, and the necessity for revising rates on alteration of circumstances, I do not think that such an agreement should be assumed in the absence of a clear provision to this effect. In my opinion the language used in the present case neither necessitates nor warrants such a construction.

"If the increase charged by the pursuers is unreasonable, it is open to the defenders to challenge it before the Railway and Canal Commission, and the pursuers would have to justify their charge, although by an Act passed in 1913, subsequent to the date of the agreement between parties, increased expenditure, due to cost of improved labour conditions, is now treated as a valid justification of increased rates. The defenders have not brought the question of the reasonableness of the charge before the statutory tribunal. They may still do so, but the question would only arise as from the date

of their application. If, therefore, I am right in the view which I have expressed, the defenders have no answer to the pursuers' claim. I repel the defences and grant decree for the sum sued for."

The defenders reclaimed, and argued—The period of ten years referred to in article 7 of the letter of agreement must be read into article 4 thereof as the period for which the rates therein specified were to continue. If article 4 was not so read, the agreement as to rates became terminable at will, but the agreement was confessedly a settlement of a long-standing dispute with the defenders, in which they had always maintained they were being charged too high a rate, and which had led them to join in the promotion of the Lothians Railways Bills. On the understanding that their complaint against the pursuers had been settled by the letter of agreement they surrendered in it their right to assist in the promotion of bills for the construction of new lines in the district, and unless article 4 was to have a definite endurance they had received no *quid pro quo* for surrender of their rights, and the dispute between them and the pursuers had not been settled. Further, it was impossible to restrict the ten years limitation to article 7 alone, for the other articles of the agreement, in addition to article 4, would in that case be rendered valueless. Further, it could not be argued that article 4 merely fixed a rate relative to the rates of other traders in the district, and in the event of a general rise in the latter's rates the defenders' rate could be raised in proportion, for the agreement was made when to the knowledge of both parties a general rise in rates was imminent. Further, that question of a relative rate was not the question between the parties which the agreement purported to settle. Moreover, if article 4 was meant to provide for a relative rate the necessary wording could easily have been inserted, but that had not been done. The provision for entering the rates in the rate book was inserted in order to enable the pursuers to make those charges and to antedate the operation of the agreement. It had nothing to do with opening a right to the defenders to go before the Railway and Canal Commission. The contention of the defenders did not make the agreement give them an undue preference, for they were nearer the docks than any other trader in the district. The Railway and Canal Traffic Act 1888 (51 and 52 Vict. cap. 25), sec. 13; the Regulation of Railways Act 1873 (36 and 37 Vict. cap. 48), sec. 14; and the Railway and Canal Traffic Act 1894 (57 and 58 Vict. cap. 54), sec. 1, were referred to.

Argued for the pursuers (respondents)—Article 7 was self-contained, and the period of ten years applied to it alone. Article 4 fixed a rate relative to the rates of the other traders. It was a reduction, but the rates were subject to alteration in proportion in the event of a general rise of rates. If the rates in article 4 had been fixed for ten years the agreement would have so provided. It was most unlikely that a railway company would fix a rate rigidly for a period, for any other trader could point to that rate as giving an undue preference, particularly if it remained fixed while other rates rose. The consideration given by the pursuers was adequate. The provision for entering the rates in the rate book enabled the defenders to convene the pursuers before the Railway and Canal Commissioner to justify any rise in the rate they might make.

At advising—

LORD PRESIDENT—I agree with the interpretation placed by the Lord Ordinary on the fourth article of the defenders' letter dated 25th October 1912, and I refer to his Lordship's opinion for a very full and accurate account of the circumstances which gave rise to the present controversy. The question before us is this—Must the North British Railway Company charge the defenders for the carriage of their coal from their pits to the ports of shipment at Leith or Granton at the rates specified in the fourth article of the letter, neither more nor less, for a period of ten years from the 1st October 1912?

Now the fourth article of the letter certainly does not say so, and nothing could have been easier than to have said so had this been intended. I am satisfied it was not intended, because, having in view the existing legislation relative to railway rates, it would have been a most unbusinesslike agreement to have made on the part either of the Railway Company or the trader to stereotype the rate for a period of ten years.

By gaining the rate specified in the fourth article of the letter the Coal Company certainly obtained a valuable concession, for the rates were considerably lower than those which had been formerly charged. But I assume that the concession was just, having regard to the comparatively short mileage which separated the defenders' pits from the ports of shipment, otherwise it would not, I assume, have been granted. A *quid pro quo* to the Railway Company is therefore, it appears to me, quite out of place, and it is not surprising to find that the so-called *quid pro quo* contained in article 7 is palpably visionary. It is idle to say that the Coal Company obtained no real and substantial concession if the Railway Company were free, at will, at any moment to increase the rates specified in the fourth article. The Railway Company had no such power. They could not capriciously raise the rates. Had they attempted to do so they would, on the defenders' challenge, have been compelled to justify the rise before the Railway and Canal Commissioners—no easy task with the agreed-on rate before them.

It is common ground, however, that article 4 is free from all ambiguity. It expresses a clear, rational, and business-like arrangement. It is self-contained. It settled a long-standing controversy between the trader and the Railway Company relative to rates. That is expressly said in article 6. It would therefore in my opinion be quite unwarrantable to import into article 4 from article 7, which is itself self-contained, a term of endurance which would alter the

natural meaning of article 4. The structure of article 7 satisfies me that the term of endurance therein specified was confined exclusively to the subject-matter of article 7 and was never intended to pervade all the other articles in the agreement.

It is satisfactory to find from the prior history of the negotiations as disclosed in the correspondence, from the evidence of Dr Moore, and from the attitude which the Coal Company adopted when the rise of rates was intimated by the Railway Company that they placed the same interpretation upon the fourth article of the latter as I now do. Obviously their present interpretation is the merest afterthought.

If this view is adopted, then I understand it is not disputed that the Railway Company are entitled to a decree in terms of the conclusions of the summons, and therefore I am for adhering to the Lord Ordinary's interlocutor.

LORD MACKENZIE—In considering the contract between the pursuers and defenders reference may be made to the correspondence and evidence in order that the Court may be placed in possession of the facts which the parties had before them when they made the contract. The Niddrie and Benhar Coal Company had for a long time been complaining that the shipping rates charged them by the Railway Company were too high. Their contention was that they were paying a group rate, and that in the amount charged them due allowance was not made for their favourable geographical position. Their coalfields are nearer the port of shipment than other coalfields in the district whose traffic is taken by the North British Railway. The advantage to which this entitled them, they maintained, was not reflected in the rate. The outcome of the dispute was that a bill was promoted by certain coalowners, including the Niddrie and Benhar Company, for the construction of a new railway to Leith Docks. The bill was opposed by the North British Company, and was thrown out. The agreement which is the subject of controversy in this action was the result of negotiations subsequently. The agreement is dated 25th October 1912. By the fourth article of the agreement it was provided—"... [*quotes, v. sup.*] ..." This was a reduction of 2d. per ton on the rate previously in force. In 1913, following upon legislation in that year, there was a general increase by the North British Company of their rates, including the shipping rate dealt with by the agreement. The effect of this was to increase by ¼d. per ton all coal rates under 1s. per ton.

The present action is to recover from the defenders the increased rates as regards coal for shipment. This the defenders say is a breach of the contract, as the shipping rates were stereotyped by the agreement made.

The defenders found particularly on article 7, which is in these terms—"... [*quotes, v. sup.*] ..." The defenders say that article 4 ought to be construed as if it provided that the reduced shipping rate should be charged for the period of ten years. There does not appear to me to be sufficient warrant in the terms of the agreement, taken as a whole, in so reading it. It is evident from the terms of article 6 that the existing differences between the two companies were considered to have been settled by articles 1 to 6 of the agreement. What the Coal Company had been anxious to secure was that their position relatively to the other coal companies should be put right. This was their position as appears from the correspondence, though Dr Moore in his evidence brings in the comparison of the rates charged in the Lothians with those in force in other parts of Scotland. The effect of article 4 was to give the Niddrie and Benhar Company a preferential position in consequence of their geographical situation. It is said that by conceding the decrease of 2d. per ton in the rate the North British Company became bound to charge no more than the reduced rate for the ten years during which the Niddrie and Benhar Company were to give them their traffic. This is not what article 4 says. The defenders contended that unless this was the true construction of the agreement, taken as a whole, then the Railway Company could cancel article 4 at pleasure the day after the agreement was made. This argument fails to take into account what is involved when a railway company makes a reduction in its rates. In the first place, it implies an undertaking that all competitive traffic conveyed for other traders shall receive the like treatment, that there shall be no undue preference; and in the next place, so far from being able to raise the rate again at pleasure, they can only do so if they are prepared, on being challenged, to justify the increase before the statutory tribunal upon the strictly defined and limited grounds fixed by Act of Parliament. The Niddrie and Benhar Company were thus at once put into the favourable position that there could be no increase in their shipping rate unless the Railway Company were prepared to discharge the *onus* upon them. It therefore appears to me quite unnecessary to import into article 4 the period of ten years from article 7. As regards antecedent probability, nothing is less likely than that the Railway Company would have tied their hands for this period. It is common ground that when the agreement was entered into a general rise in rates was in prospect. Yet the success of the defenders' argument here involves this, that they could not for a period of ten years raise any of their shipping rates in the district without giving an undue preference to the Niddrie and Benhar Company. If they had bound themselves with that company they were no longer free agents as regards the rest of the community. This tells strongly against the contention that the fair implication of the whole agreement is that a period of ten years should be read into article 4. The history of article 7 is made plain by the correspondence. The parties had been disputing not about the Lothian Railways Bill but about rates. The promotion of the bill was one of the features of that controversy.

They settled the difference about rates in the earlier articles of the agreement, and then on the suggestion of the North British Company the undertaking by the Niddrie and Benhar Company not to promote any new line was inserted. As proposed the undertaking would have been perpetual. It was at a later interview that on the representation of the Niddrie and Benhar Company their obligation was limited to ten years. This again confirms the view taken above of the construction that should be put upon the agreement. That this was the view the defenders themselves took at first when the proposed increase was tabled is shown by their letter of 2nd December 1913, which says—"We fail to see that anything has occurred since to justify raising a rate which was considered by you not to be too low at that date." This was only to be expected in view of Dr Moore's evidence, in which the following passages occur:—"(Q) In all the negotiations prior to the negotiations leading up to the present agreement now in dispute was any term of endurance of the concession given to you either discussed or stipulated for?—(A) I think not—not to my knowledge. (Q) Were you content to rely upon the publication of the rate and the statutory protection that that gave you against any increase?—(A) Yes, I expect we were. . . . As far as the amount of deduction to be given is concerned that had been agreed, and that had been agreed between us and the Railway Company without any discussion of the endurance of that agreement." The defenders' argument does not receive support from a consideration of articles 1 to 3, which deal with facilities and are of the nature of obligations *ad facta prestanda*. It may well have been the intention of parties that these should be in force until a new arrangement was made. Nor is light thrown on the matter by article 5, which, if capable of being implemented at all, would be controlled by the rights of parties as measured by a just construction of article 4.

It only remains to say one thing with reference to an argument addressed to us on a passage in the Lord Ordinary's opinion—"By section 14 of the Regulation of Railways Act 1873 it is provided that a railway company shall keep a book or books showing every rate for the time being charged for the carriage of traffic other than passengers and their luggage. If the railway company increase the rates so appearing against a trader or traders, and complaint is made to the Railway and Canal Commission against the increase as unreasonable the *onus* is put upon the company by section 1 (1) of the Railway and Canal Traffic Act 1894 of proving that the increase of the rate or charge is reasonable, and for that purpose it is not sufficient to show that the rate or charge is within any limit fixed by an Act of Parliament." I do not interpret the Lord Ordinary as meaning that any peculiar virtue as regards the present question lies in the fact that the rate appeared in the rate book. All that is meant is that the rate is the recognised rate.

For these reasons I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD SKERRINGTON — The defenders' counsel argued with some plausibility that the first six articles of the agreement expressed the conditions upon which alone the defenders were willing and had agreed to give their traffic to the pursuers' railway. He maintained that as his clients were expressly bound by the seventh article to continue so to give their traffic for a period of ten years, it followed by necessary implication that the Railway Company was also bound to observe these conditions during the same period, and in particular to continue to charge the defenders no more than the reduced rates specified in the fourth article. I prefer the view of the agreement suggested by the pursuers' counsel to the effect that its various stipulations are of a heterogeneous character, and were not necessarily intended to have the same endurance. If this view be sound it would follow that in the absence of an express time limit the intended endurance of any particular article must be arrived at from a consideration of its language and its subject-matter. Article 4 stipulates merely that the rates for coal shall "be reduced" to a certain figure — language which does not necessarily imply that after the reduction has taken place it shall continue either in perpetuity or for some definite term. If, however, it had appeared that this construction would have conferred upon the defenders a merely illusory benefit, it might have been legitimate to read the article as stipulating that the rates should "be and remain reduced." I am satisfied, however, having regard to the legislation and practice as to railway rates, that the defenders obtained a valuable concession in respect merely of having their rates reduced. Accordingly there exists no satisfactory basis for the inference that both parties must have intended that the Railway Company should not be entitled to charge the trader with any higher rate for his coal traffic for the period of ten years mentioned in the last article of the agreement. On the other hand the inconvenience to which article 4 as construed by the defenders would expose the pursuers is so serious that it is difficult to come to the conclusion that the parties negotiated and contracted on any such footing, more especially in view of the then expected legislation authorising a general increase in railway rates. I am for adhering to the judgment of the Lord Ordinary.

LORD JOHNSTON was not present.

The Court adhered.

Counsel for the Pursuers — Macmillan, K.C.—Watson, K.C. —E. O. Inglis. Agent —James Watson, S.S.C.

Counsel for the Defenders—The Dean of Faculty (Clyde, K.C.)—D. Jamieson. Agents —Drummond & Reid, W.S.