his title, James Hunter was not superior in the salmon fishings." Now the argument maintained here was, that he lost his right to the fishing because of the resignation. I do not understand how that could well be. I do not see how consolidation could lose to him the right of fishing which he had acquired. I think it would be a very extraordinary doctrine to hold, that by resigning that right in his own favour he had lost it, unless there had been a new infeftment or feudalizing. I do not think that that is a sound doctrine. Then again it has been said, that he had not the right of superiority. If that were so, I do not see how it can be said that he could effectually resign it into his own hands, or that there was any resignation at all.

On the other part of the case, the question of fact, certainly it is very important to attend to the particular circumstances of the case, for it involves a good deal of novelty. At the same time, I think that there is a principle for the solution of it. The general doctrine and rule of law is, that each party is entitled to fish to the centre of the stream. Then let us see what is the effect of anything that arises in the *alveus* which is inconvenient to a party whose fishing is on the southern side of the centre of the stream. Now supposing that this had been a smaller bank than it is, and that it had not approached so near at its western end to the property of the appellant, and that it had been a mere bank arising in his portion of the stream, which made it inconvenient for fishing so near the *medium filum* because he could not cast his net between the shore and the bank, is that a reason why the other party should be prevented from having his right substantially as it was found? Clearly not. The only thing that could deprive him of the application of the ordinary rule as to what is to constitute the *medium filum*, would be what my noble and learned friend who spoke last alluded to, and what was alluded to in the case of *Wedderburn* v. *Paterson*, namely, that there had been something attached to the soil, some extension of the proper shore on the southern side, that would have made it the point from which you were to measure the centre of the river. Therefore I think that here, so long as the bank is in the position in which it is admitted by the parties to be, we cannot alter *termini* from which we are to measure where the *medium filum* is. I am glad to observe, at the same time, that while matters stand in this position, it does not appear, that the fishings of the appellant have been damaged by it. On the contrary, so far as the evidence goes, it appears that the effect of it has been rather to deepen the water on his, the southern, side of the stream, and to give him a greater amount of fishing than he had before. I think the judgment of the Court below ought to be affirmed.

Interlcutors affirmed, and appeal dismissed with costs.

Appellant's Agents, H. G. and S. Dickson, W.S.; Loch and Maclaurin, Westminster.—*Respondents' Agents*, T. and R. B. Ranken, W.S.; Stibbard and Beck, London.

JULY 11, 1870.

THE COMMISSIONERS OF SUPPLY FOR THE COUNTY OF LANARK, *Appellants*, *v.* NORTH BRITISH RAILWAY CO., *Respondents*.

Railway—Assessment—Exemption—Valuation Act—Prisons Act—General Statute repealing Special Statutes—*Two special railway Acts, passed in* 1825, *exempted the lands taken for the purposes of the railway from all public and parochial burdens.*

HELD (reversing judgment), *That such exemption was impliedly repealed by the Valuation Acts and Police and Prisons Acts, which imposed burdens altogether new since the passing of the special railway Acts.*

This was an appeal from a decision of the First Division. In 1867 the North British Railway Company raised an action of declarator against the Commissioners of Supply for the county of Lanark, seeking to have it declared, that the company was exempt from certain assessments made by the defenders upon the company. The Act for making the Monkland and Kirkintilloch Railway passed in 1825, and expressly provided, that the lands conveyed to the company shall not be liable for land tax, nor any public or parish burden. The Act for making the Slamannan Railway, passed in 1835, also provided, that the grounds should not be liable in payment of cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same shall be paid by the original proprietors of such grounds. These railways now belonged to the North British

[1] See previous report 7 Macph. 201; 41 Sc. Jur. 130. S. C. 8 Macph. H. L. 141; 42 Sc. Jur. 506.

Railway Company. Notwithstanding these exemptions, the Commissioners of Supply had made an assessment on the railway company for prison and county police purposes. The defenders contended, that these taxes were leviable by virtue of the Valuation of Lands Acts and the Prisons (Scotland) Act, which extended to all lands and heritages, including railways; that the assessments from which the old Acts contained exemptions were not public, parochial, or parish burdens within the meaning of those Statutes; but at all events, that the exemptions did not extend to assessments imposed by Statutes passed subsequent to the date of the alleged exempting Statutes. The Lord Ordinary held, that the respondents were exempt from these assessments, and the First Division adhered to his interlocutor. The Commissioners then appealed.

Sir R. Palmer Q C., and *Mellish* Q.C., for the appellants.—This interlocutor was wrong, and must be reversed, for the case of *Duncan* v. *Scottish North Eastern Railway* Co., *ante*, *p.* 1767; 42 Sc. Jur. 410 : 4 R. 2 Sc. Ap. 20 : 8 Macph. H. L. 53; recently decided by the House, was substantially the same as the present case. In that case it was laid down, that an exemption such as was found in these local railway Acts was no longer applicable to the new state of things under the Poor Law Amendment Act of 1845, which substantially agreed with the language of the Valuation and Prison Acts, and all the series of decisions in the Scotch Courts, on which the present decision was based, had been overruled.

The *Lord Advocate* (Young), and *Anderson* Q.C., for the respondents.—This case is not identical with *Duncan* v. *Scottish North Eastern Railway Co.*, and may be distinguished. In that case the Poor Law Act made many vital changes in the rules of assessment, and introduced new subjects of assessment; but the Valuation and Prison Acts were never intended to interfere with the question of assessability, and all they were intended to affect was the mode of valuation, by making it more uniform. The Acts deal only with the lands and heritages belonging to railway companies, and do not create any new subject of assessment. Therefore the exemption continues, and the judgment ought to be affirmed.

LORD CHANCELLOR HATHERLEY.—My Lords, in this case it appears to me, that we are bound by the conclusion at which we have already arrived in the case of *Duncan* v. *The North Eastern Railway Company of Scotland*, for, so far as the case now before us differs from that case, it appears to me that the difference is not favourable to the contention of the North British Railway Company to be entitled to this exemption. The clauses in the two Acts which have been referred to, the Monkland Act and the Slamannan Act, are somewhat different in their wording, the one Act, viz. the Monkland Act, containing simply a declaration as to exemption, by which it is stated that the railway company are not to be entitled to the superiority when they purchase land; but notwithstanding the said conveyance, the rights of superiority shall remain as before entire in the person granting the said conveyance, and the ground so conveyed to the said company shall not be liable for any duties or casualties to the superiors, nor for land tax, nor any public or parish burden. In the other Act, the Slamannan Railway Act, the clause is more like that which is contained in one of the Acts which were before us on the former occasion, for it states, "that the grounds to be acquired for the purposes of this Act shall not be liable in payment of any feu duty, casualties of superiority, cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same shall be paid by the original proprietors of such grounds, except in case the said Slamannan Railway Company shall purchase and acquire the whole grounds."

Now, in the case that was before us upon the former occasion, we came to the conclusion, though one of your Lordships (LORD COLONSAY), while agreeing in the conclusion come to, did not altogether adopt the same grounds for that conclusion, that inasmuch as this exemption was made in respect of the charges which were payable by the then owners of lands, and the owners of lands were then chargeable, inasmuch as a subsequent Act of Parliament was passed which entirely changed the mode of assessment, and the incidents of the charge of the particular rate which was then in question, namely, the poor rate—that, whatever might have been the effect of the preceding exemption, that exemption came to an end upon the passing of the Act of 1845, which so largely modified the mode in which the burden was to be imposed and borne.

In truth, according to both these Acts now before us, it would appear, assuming that the Monkland Act left the proprietors of the superiority liable to the charge, that the original proprietor would be left liable to a charge of this description, namely, the charge which he would bear according to the then valued rent, not the actual rental of the property which he had disposed of to the company, and all charges and burdens assessed at that time upon the company. We thought that it was not intended that any different burden, or even any modification of the same burden, which became so complete a modification as wholly to alter the incidence and character of that burden, would be included in that exemption which the company contended they were entitled to. We came to the conclusion in that case, that the company were not exempted on the one hand, and the proprietor burdened on the other, with the payment of an assessment made according to the principles contained in the Valuation Act. Instead of paying upon a valued rent of the property which he had disposed of to the railway company, he would pay an assessment which was wholly independent of the extent of acreage of that land, which was wholly independent, in fact, of what the valued rent of that land had been, but which was

dependent upon the success of the speculation of the railway company, not in that parish only, but in other parishes, and to an apportioned part of the burden imposed upon the whole profit of the railway by its successful speculations as carried on to any extent, quite irrespectively of what might have happened in the particular parish itself.

It appears to me, that the vendor, upon the proper construction of this Act, would remain subject to, and that the company would remain exempt from, every burden which was then imposed upon the land, notwithstanding the increased amount of rate that the land might become liable to in respect of the improved value of that land. Supposing, for instance, as I took occasion to observe in the former case, that a cotton mill or some other valuable property had been erected upon the land, the burden in respect of that cotton mill would be a burden which, according to the existing laws, the property was to be taken to be subject to, and which it was well known to be subject to at the time, it being assessable according to its true value, and as long as things remained in that state and no change was made by the Legislature, and no further Act of Parliament was passed in any way to impose a new duty. That would be the state of the obligations between the railway company, on the one hand, and the proprietor who had sold his land to the Railway Company, on the other. But when a new burden was imposed of such a character as I have described, the whole relations of the parties were entirely changed, and to say, that under a Parliamentary contract, to be subject to the burden then existing and to be subject to all such alterations and changes as the existing state of the law would authorize in those burdens, a person was not to be subject to increased burdens consequent upon, and occasioned by, a totally new system of legislation, would have the effect of entirely violating the principles of the contract entered into between the parties.

In this case there is the additional circumstance, that every one of the burdens here is an entirely new burden in this sense, that at the time the Railway Acts were passed the particular charges here in question, namely, those as to weights and measures, and as to persons and police, were not charges at all affecting the land purchased of the different proprietors in the mode in which they have now been made to affect them. They were charges which had to be raised according to a different mode and different course of procedure. In some cases, as I understand it from the facts of the case, the different burghs had to bear certain charges as to the police, and the counties had to bear the charges in a different mode. But the mode adopted in respect to the charge for police in the present Act and the mode of charge adopted in the other Act seem to have been of a totally different character from anything that existed at the time of what I may call this Parliamentary contract being carried into effect.

Therefore, so far as I see, this case is not merely subject to the difficulties which we should have had in holding the railway company to be exempted in the case of *Duncan* v. *The North Eastern Railway Company* of Scotland, but it is also subject to other difficulties, and it is not to be distinguished by any sound distinction that can be drawn between the two cases; and the distinctions which have been referred to upon the present occasion I think will hardly warrant us in coming to the conclusion of there being a substantial difference between this case and the case referred to in the respondents' case, with respect to which, after setting out the judgments of your Lordships, it is said, "The two grounds of decision, therefore, in the *St. Vigeans case* (*Duncan* v. *Scottish North Eastern Railway Company*) were the statutory creation of a totally new subject of assessment under the name of Railway, and the distinct abrogation by the Poor Law Act of 1845 of all laws, Statutes, and usages at variance or inconsistent with its provisions. Neither of these grounds can apply to the present case. It is no part of the purposes of the Lands Valuation Act of 1854 to introduce any new subject of assessment. It merely introduces a new mode of assessment, and expressly declares, that it is not to alter or affect any exemption or liability previously existing. Although, therefore, that Act necessarily alters the statutory value of the lands and heritages belonging to them for police and prison purposes, neither that Act nor the police or prison Acts which adopt it, in any way affect the subject or the character of the assessment, or take away the privilege of the railway company of exemption from the burden."

I think that distinction is far more in words than in any real principle, because in substance what we said on the former occasion with reference to the mode of valuing the railway, applied exactly in terms to what has been done under these different Acts, viz. the railway is directed to be assessed in a manner totally different, and with a burden totally different from that which, as it appears to me, was created by the original statutory arrangement between the parties.

As to the clause "that it is not to alter or affect any exemption or liability previously existing," I apprehend, that that does not refer at all to any engagements of a character such as we found in the previous Acts, but to a case where there was a real exemption from all liability past, present, or to come, which, of course, is a conceivable case, where there were certain special grounds of exemption distinctly pointing to the future as well as the past. It was meant that that was not to affect that exemption, or any arrangement of the kind.

The argument was put before us very ingeniously of the possible case of a railway running through a whole county and one county only, in which case the provisions as to valuation would

not come into effect. That was an argument pressed by one of your Lordships (LORD COLONSAY) in his opinion upon the case of *Duncan* v. *The Scottish North Eastern Railway Company*, and no doubt there is much to be said, in that view of the case, of the possibility of such a state of circumstances arising, that the burden of assessment might be supposed to take a character not so entirely different from that of the original burden as it existed at the date of the original Act. But at the same time, if I may humbly say so, in my judgment I think that would hardly amount to any such conclusion in substance, because I apprehend, that these regulations about valuation in the Railway Act contemplate all the possible cases of railway companies existing, of course including the possibility of a railway passing from one county into another; and what is more, they contemplate the possibility of a railway being extended, as probably it will from time to time be extended, and as it has in fact, in these cases of the railway before us, been extended from one county into another, and they point out that which is to be the relation between the parties for all time.

I think, therefore, in substance, that there is no difference between the two cases, except that, as I have said, there is a somewhat additional circumstance in favour of the view taken by your Lordships in the case of *Duncan* v. *The Scottish North Eastern Railway Company*, that the special burdens now before us are burdens which must have been imposed since the passing of the original Acts under which the Monkland and the Kirkintilloch and the Slamannan Railways were constructed and carried into execution. It appears to me, therefore, that the only course we can take upon the present occasion is to reverse the interlocutors complained of, and to pronounce an absolvitor.

Mr. Anderson.—In the other case it was a remit to the Court below. Probably your Lordships will pronounce the same judgment in this case, *mutatis mutandis*, as in the former case.

LORD COLONSAY.—My Lords, I concur in the judgment which is proposed to be pronounced, and I have only to add, that although I did not concur in the reasons assigned for the judgment pronounced in the *St. Vigeans case*, yet I think the principles recognized in the judgment, and the grounds on which the majority of your Lordships who gave your opinions were rested, are the principles on which this case must be decided. I hold them to be settled principles, and they must govern the case before us.

I apprehend that the judgment in substance must be, in the first place, as regards the declarator, an absolvitor from the conclusions of the action. And in the next place, as regards the reasons of the suspension, repelling the reasons of suspension. There is an exception with reference to a small sum, some £14 or £15, which is a matter on which the judgment of the Court below is not appealed from. But in the former case I think there was a remit with a declarator by the House of the grounds on which the judgment ought to proceed, and of the results at which the judgment ought to arrive, and perhaps that may be done here. If that be so, it will be necessary merely to remit the case to the Court of Session to repel the reasons of suspension.

LORD O'HAGAN.—My Lords, if this question had still been open to controversy, I should have liked to have had time to consider the very ingenious and persuasive argument which had been presented on the part of the respondents. But after listening carefully to the able argument at the bar, I do not think that the case is distinguishable from that which has been already decided. It appears indeed not only to be in reality undistinguishable, but to be confessedly undistinguishable. In fact it appears to me to be an *à fortiori* case. Therefore, I concur in the judgment proposed to be pronounced.

Interlocutors reversed, with declaration and remit.

Appellants' Agents, Tods, Murray, and Jamieson, W.S.; Loch and Maclaurin, Westminster. —*Respondents' Agents*, Hill, Reid, and Drummond, W.S.; Connell and Hope, Westminster.