in the trade. But further, it is proved to demonstration in this case that the parties to this lease did mean by their language in this lease what it is conceded parties in similar circumstances do usually mean, because the tenant entered and took possession on the 26th of May 1866, and held the land as tenant for nineteen years from that date. Therefore upon the contract between the parties I think it quite plain that the farm was let for nineteen years from the 26th May 1866. This would have applied to a verbal lease for a year—the length of time does not matter. If the parties in their communings in regard to the lease for a year had used the expression Whitsunday, it would have been competent to refer the matter to the oath of the parties, and have oral evidence as to what they meant by the use of that term Whitsunday.

But we are not dealing with any mysterious matter. I am persuaded, as a judge is usually persuaded, that the meaning of the contract entered into between the parties to it was, that the lease was to run for nineteen years from the 26th May 1866, and that consequently it ended on the 26th May 1885. Well, the lease commenced on the 26th May and ended on the 26th May, and on that simple ground I am of opinion that we should decide the case in favour of the respondent.

I do not think the Act of 1690 has anything to do with it. The change made by that Act was just the change from the fluctuating ecclesiastical period to a fixed term. We have here a conventional term, and I think that is the term that the parties to this contract meant when they used the expression term of Whitsunday.

I am therefore of opinion that the case should be decided in favour of the respondent on two grounds—1st, That we have evidence by the admission of both parties that parties in the district in similar circumstances to those here mean by the term Whitsunday the 26th of May; and secondly, that it is proved that the parties to this contract meant that date by the expression "term of Whitsunday."

LORD CRAIGHILL—I have come to the same conclusion. I think that the true interpretation of the words in this lease, "term of Whitsunday," is the date of the 26th of May. If there had been within the lease such words as "by the term of Whitsunday 1866 we mean the 26th day of May 1866 to be the time of entry upon the farm," there is no doubt that the condition would have been quite a good one. There being no such words in the lease, then if no inference could be drawn from the conduct of the parties, the expression "Whitsunday" must be taken to mean the 15th of May. But although that is the meaning generally attributed to these words, still the words admit of such qualification as I have mentioned. That which the parties have said must be taken as imported into the lease. The parties have not indeed actually said it in the lease itself, but if we want an interpretation of the words in the lease the conduct of parties is the best interpretation that can be afforded.

The parties said in the lease "the term of Whitsunday 1866, which is hereby declared to be the term of entry under this lease." Now what was the day on which entry was to be obtained. Both parties have admitted that that day was the 26th of May 1866, and accordingly that was the day in which entry was obtained under the missives of lease, although the principal deed itself was not signed until June 1867. But that was very shortly after the tenant had entered upon the occupation of the farm, and both the landlord and the tenant must have been fully aware of their respective rights and duties under the lease. Just in the same way we must read the expression "term of Whitsunday" used in the lease in reference to the determination of the tenancy. If the tenancy did not begin until the 26th of May 1866, then it did not end until the 26th of May 1885. There was indeed no difficulty made when that period did actually arrive. The tenant remained on as a matter of course, and as nothing to the contrary was said, we must take it that he remained with the landlord's sanction until the 26th of May. It appears, then, when we have those facts before us, that the 26th must be taken to be the true meaning of the words used in the lease "term of Whitsunday."

LORD RUTHERFURD CLARK—I am of the same opinion.

The Court recalled the Lord Ordinary's interlocutor, repelled the reasons of suspension, and refused the interdict craved.

Counsel for Suspender—Comrie Thomson—Darling. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents—D.-F. Mackintosh, Q.C. — Salvesen. Agent — Thomas M'Naught, S.S.C.

HOUSE OF LORDS.

Friday, May 14.

(Before Lord Chancellor Herschell, Lords Watson, Ashbourne, and Fitzgerald.)

MAGISTRATES OF GLASGOW *v.* COMMISSIONERS OF POLICE OF HILLHEAD.

(*Ante* vol. xxii. p. 580, and 12 R. 864.)

Road—Bridge—Bridge partly in one Burgh and partly in another, and Accommodating Traffic of Other Places—Liability for Maintenance—Roads and Bridges Act 1878 (*secs.* 37 *and* 38).

Section 37 of the Roads and Bridges Act 1878 provides that "where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding the same shall, failing agreement, be a charge equally against the trustees of the county or counties and local authority or authorities of the burgh or burghs within which it is partly situated."

By section 88 it is provided that "Whereas there are or may be bridges in Scotland which accommodate the traffic not only of the county or counties or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county or of other counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of

managing, maintaining, repairing, and if need be rebuilding such bridge, and of paying the debt affecting or which may affect the same, should be imposed on the county or burgh within which they are so situated," the counties and burgh authorities may agree that "any such bridge" accommodating other traffic than that of the county or burgh within which it is situated, and may agree as to the proportions in which the cost of maintaining, and if need be rebuilding such bridge, shall be borne "by the county or counties, burgh or burghs, to which it is common," and that application may be made to the Secretary of State to determine that any bridge locally situated within a county or burgh shall, in respect of its accommodating other traffic than that of such county or burgh, "be deemed to belong in common to the county or counties and burgh or burghs to be named in his determination."

Held (*aff.* judgment of First Division) that sec. 88 was not limited to the case of a bridge wholly situated within one county or burgh, but applied to the case of a bridge partly situated in one burgh and partly in another, and which accommodated traffic not only of the burghs in which it was situated, but also of the adjoining county and adjoining burghs.

This case is reported in Court of Session, *ante*, vol. xxii. p. 580, and 12 R. 864, 20th March 1885.

The Magistrates of Glasgow (pursuers) appealed.

At delivering judgment—

Lord Chancellor—This action was brought by the Lord Provost, Magistrates, and Town Council of Glasgow in order to interdict the Commissioners of Police of the burgh of Hillhead from proceeding in an inquiry instituted under section 88 of the Roads and Bridges (Scotland) Act 1878 with respect to two bridges across the river Kelvin, both of which are situated partly within the city of Glasgow and partly within the burgh of Hillhead. The Lord Ordinary assoilzied the defenders from the conclusions of the action, and his interlocutor was affirmed by the First Division of the Court of Session. The determination of the action depends upon the construction of section 88 of the Roads and Bridges (Scotland) Act 1878, which provides for certain proceedings whereby the localities in which bridges are situated may be relieved of a portion of the expense of maintaining them where they accommodate the traffic of other localities. The contention on the part of the pursuers is that the proceedings instituted by the defenders, though they would have been lawful if the bridges in question had been situated entirely in one burgh, were not authorised by the enactment, which, it was contended, is inapplicable to bridges situated partly in one burgh and partly in another. The sole question in the action is whether this contention is well founded. The preamble of section 88 is in these terms:—"Whereas there are or may be bridges in Scotland which accomodate, or may accommodate, the traffic, not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of managing, maintaining, repairing, and, if need be, rebuilding such bridges, and of paying the debt affecting or which may affect the same, shall be imposed upon the county or burgh within which they are so situated."

It appears to me clear that the language of this preamble which speaks of bridges "accommodating the traffic of the county or counties, or burgh or burghs, other than those in which they are locally situated," applies in express terms to bridges locally situated in more than one burgh, and no reason was, or I think could be, suggested in argument why that mischief recited in the preamble, and which the enactment was intended to remove, existed less in the case of such bridges than in the case of a bridge situated entirely within the ambit of a single county or burgh. One would expect, therefore, to find that the enactment following a preamble thus worded would apply alike to all such bridges. Accordingly the enactment begins in these terms—"Be it enacted that in respect of such bridges the following provisions shall have effect." This, in my opinion, makes all the provisions of the section expressly applicable to all such bridges as fall within the description of the preamble, including, therefore, bridges situated in more than one burgh. It is true that in the latter part of the section it is provided that "It shall be lawful for the county road clerk or clerk of supply of any county, or for the town clerk or clerk of any burgh, to apply to the Secretary of State to determine that any bridge locally situated within a county or burgh in respect of its accommodating other traffic than that of such burgh or county only shall be deemed to belong in common to the county or counties and burgh or burghs to be named in his determination." It was argued that this language could not apply to a bridge situated partly in one burgh and partly in another. I am unable to arrive at such a conclusion. The language used might, perhaps, have been more apt, but reading the whole section together, I see no difficulty in so construing these words as to include all the cases to which the earlier part of the section declares that the enactment is to apply; and I think that the 4th section of the 13th Vict. cap. 21, makes it clear that this is the proper construction. It has been argued that there is some inconsistency between the provisions of section 88, when thus construed, and the provisions of section 37. To my mind there is none. Section 11 of the Act provides that each county or burgh shall be bound to maintain that portion of the highway which is situated within it. But inasmuch as it would have been very inconvenient that the liability to repair portions, and not always well-defined portions, of a single structure like a bridge should devolve upon separate authorities, section 37 made the repair and maintenance of these structures a matter to be carried out jointly by the authorities of the several local areas in which they are situate. To this extent it settled, I think conclusively, the liabilities of these authorities respectively. But section 88 has a totally different purpose. It is intended to meet the cases in which it is not fair that the locality or localities in which the bridge is situate should be left to bear the entire burden of its repair by reason of its accommodating the traffic of other localities; and it provides a

scheme by which some relief may be given to the authorities whose liability is created by the local situation of the bridge. Upon the whole, therefore, I am of opinion that the interlocutor appealed from should be affirmed, and the appeal dismissed with costs, and I move your Lordships accordingly.

LORD WATSON—I am of opinion that the decision of the Court below is right, and that the interlocutor appealed from must be affirmed. Section 11 of the Act of 1878 imposes upon county and burgh authorities the duty of managing and maintaining the highways and bridges within their respective areas. Had that been the only enactment upon the subject in all cases where a bridge is partly situated in two areas, whether county or burghal, each authority would have been charged with the maintenance of that portion of the fabric of the bridge and its approaches which was locally situated within its own territory. It is, however, provided by section 37 that in such cases the whole cost of the maintenance and repair shall be borne equally by the two authorities interested, the management of the bridge being vested in a joint committee to be appointed by them. A bridge cannot, like a road, be suitably apportioned between two sets of managers, because the stability of the fabric depends more or less upon the condition of all its parts; and the due maintenance of part of the fabric in one area might necessitate the repair of part situate in another area and under different management. The enactments of section 37 were manifestly intended to prevent disputes, and possibly disasters, which might have arisen under a system of divided management and responsibility. The 11th and 37th clauses of the Act deal with the management and maintenance of bridges upon considerations derived from the locality in which they are situated. Section 88, which your Lordships have to construe, relates to an entirely different subject-matter. Its provisions refer, not to the position of the bridge as being within a particular area or areas, but to the character of the traffic which it accommodates. These provisions contemplate the case of bridges which accommodate not only the traffic of the areas in which they are situated, but also that "of the adjoining county or of other counties and burgh or burghs, or one or more of them," and it appears to me that their object is to relieve the authority of the local area from the burden of maintenance to an extent proportionate to the amount of such foreign traffic. It may be said that in a certain sense every bridge which is used by persons coming from another district accommodates the traffic of that district. I do not think that is the kind of case which section 88 was meant to provide for. But there may be in a burgh, for instance, a bridge which is extensively used for through traffic passing between two termini outside the burgh, or for other traffic which can in no reasonable sense be characterised as burgh traffic. That is the kind of case to which I understand the provisions of section 88 to apply, and if a bridge does in point of fact accommodate foreign traffic of that description there can, in my opinion, be no *a priori* probability that the Legislature meant to give relief provided such bridge was wholly within one burgh, and to withhold relief in the event of its being situated within two burghs. For the purpose of this case the preamble of section 88 is the most important part of the clause. The expressions which occur in the preamble, "the county or counties, or burgh or burghs, as the case may be, within which they are locally situated," appear to me, according to their natural meaning, to include a bridge in two counties or in two burghs, as well as a bridge wholly situated in one county or in one burgh. I am unable to discover any good reason for holding that the expression "bridge in a burgh or burghs" is exclusive of a bridge which happens to be within two burghs. I am accordingly of opinion that the bridge in dispute, which is partly in the royal burgh of Glasgow and partly in the Police burgh of Hillhead, is within the class of bridges described in the language of the preamble, and may be brought under the operation of section 88, if after the requisite statutory procedure has been followed out the Secretary of State shall so determine. But it has been argued that the special enactments contained in sub-sections (1) to (4) inclusive are expressed in terms which indicate that the Legislature did not intend the provisions of section 88 to apply to any bridge which is not wholly situated in one county or one burgh. It does not appear to me that these enactments are so framed as to exclude the case of a bridge situated in two burghs. Upon that point I agree with the reasoning of the majority of the Judges in the Court below, and shall not repeat it. But I desire to say that even if it were shown that the language of these sub-sections is inapplicable to a bridge within two burghs, it would not, in my opinion, be a necessary consequence that such a bridge was not entitled to the benefit of their enactments. The fact that the sub-sections were expressed in terms which, taken *per se*, would exclude some of the bridges mentioned in the preamble, would, in my opinion, be immaterial when the Legislature has expressly enacted that they shall apply to all these bridges.

LORD ASHBOURNE and LORD FITZGERALD concurred.

The appeal was dismissed with costs.

Counsel for Pursuers (Appellants)—Sir R. Webster, Q.C.—J. P. B. Robertson, Q.C.—Lang. Agents — Simpson, Waterford, Goodhart, & Medcalf, for Campbell & Smith, S.S.C.

Counsel for Defenders (Respondents)—Lord Advocate Balfour, Q.C. — Henderson Begg. Agents—W. A. Loch, for Morton, Neilson, & Smart, W.S.