HOUSE OF LORDS.

Friday, May 20.

(Before Lord Chancellor (Halsbury), Lords Watson, Fitzgerald, and Macnaghten.)

THE INLAND REVENUE *v.* THE GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

(*Ante*, vol. xxiii. p. 312, and 13 R. 480.)

Revenue—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97), *sec.* 70—*Consideration for the "Conveyance on Sale"—Lands Clauses (Scotland) Act* 1845 (8 *Vict. cap.* 19), *sec.* 48—*Compensation for Loss of Business.*

In a compulsory sale under the Lands Clauses Act 1845 a jury awarded the owners of the subjects, who were also the occupants, compensation as follows—(1) For the value of land taken, (2) for the value of buildings, machinery, &c., and (3) for loss of business previously carried on by them on the subjects taken. *Held* (*rev.* First Division) that the compensation for loss of business was part of the consideration for the "conveyance on sale," within the meaning of the Stamp Act 1870, and that the *ad valorem* stamp upon the conveyance was to be assessed upon the full amount of compensation.

This case is reported *ante*, vol. xxiii. p. 312, and 13 R. p. 480.

The Inland Revenue appealed.

At delivering judgment—

LORD CHANCELLOR (HALSBURY)—My Lords, I cannot say that any doubt has been infused into my mind by the arguments which have been addressed to us by Mr Balfour and Mr Wright. The matter seems to me to be an exceedingly plain one. That which the railway company had, under the powers of the Act, power to do was to take land compulsorily from the owners, and the statute has provided the machinery by which the price at which it is to be taken should be ascertained. The parties may if they please agree, but if they do not agree the price is to be ascertained as between them, and two subject-matters are dealt with by the statute—one the value of the property so taken, and the other the question of severing the property so taken from the lands held therewith.

The 48th section of the statute is that which in truth we are at present construing, because this is a proceeding under the 48th section, and although the other sections of the statute may be quoted to throw light upon and to interpret the language of that section, that which your Lordships are considering at present is a proceeding under the 48th section. That section expressly provides—"Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict," and so on, and the latter part of the section refers to severance. The two things—and the only two things—which are within the ambit and contemplation of the statute are the value of the lands and such damages as may arise to other lands held therewith by reason of the particular land which is taken being taken from them.

Now, my Lords, that seems to me to be at the foundation of the whole argument. That alone was what the jury in this case had power to assess, because it is admitted that no question arises here upon the other part of the section—no question arises here about any damage from severance. It is admitted therefore impliedly that the only thing which the jury had here to assess was the value of the lands. My Lords, of course the word "value" is itself a relative term, and in ascertaining what is the value of the land it is extremely common—indeed it is inevitable—to go into a great number of circumstances by which that which is proper compensation to be paid for the transfer of one man's property to another is to be ascertained. A whole nomenclature has been invented by gentlemen who devote themselves to the consideration of such questions, and sometimes I cannot help thinking that the language which they have employed, so familiar and common in respect of such subjects, is treated as though it were the language of the Legislature itself. We, however, must be guided by what the language of the Legislature is. Now, the language of the Legislature is this, that what the jury have to ascertain is the value of the land. In treating of that value the value under the circumstances to the person who is compelled to sell (because the statute compels him to do so) may be naturally and properly and justly taken into account, and when such phrases as "damages for loss of business," or "compensation for the good-will" taken from the person, are used in a loose and general sense they are not inaccurate for the purpose of giving verbal expression to what everybody understands as a matter of business, but in strictness the thing which is to be ascertained is the price to be paid for the land—that land with all the potentialities of it, with all the actual use of it by the person who holds it, is to be considered by those who have to assess the compensation. As Mr Balfour has pointed out, the language used in this narrative may not perhaps be strictly accurate. I am by no means certain that it is, but suppose that it is not—suppose that the jury or the conveyancer who drew this deed has in the narrative introduced a description of the different elements by which the gross sum is to be ascertained, and has inaccurately used phrases not altogether inappropriate to the particular transaction which they describe—what does that come to? The thing which the railway company had to pay, and the thing which the owners of the land had to transfer by this compulsory process was, on the one hand, £52,658, 6s. 7d., including this £9499, 8s. 3d., and on the other hand, the lands and premises which were the subject-matter of the transaction. Under these circumstances, my Lords, it seems to me to be beyond all doubt that that which is to be paid as stamp duty is the *ad valorem* stamp upon the transaction itself which conveyed from the one to the other that which, by the process of this Act of Parliament, is ascertained to be the value, and that is, under the express language of the 48th section, the value of the land. If it is the value of the land, it cannot be doubted that the *ad valorem* stamp must be upon that value. It appears to me

therefore, beyond all doubt, that the judgment of the Court below ought to be reversed, and that your Lordships ought to affirm the original judgment of the Commissioners, and I so move your Lordships.

Lord Watson—My Lords, I am also of opinion that the judgment of the Court of Session in this case cannot be sustained. The learned Judges in the majority appear to me to have fallen into error from assuming that the Lands Clauses Act authorises persons whose property is taken to claim, and compels railway companies to pay, something in the nature of personal damage. That view is pretty strongly expressed by Lord Mure, one of their Lordships; but it appears to me to be entirely inconsistent with the provisions of the Act. As I read these provisions the statute authorises in the first place compensation for land, or an interest in land, taken. By "compensation" I take it is meant an equivalent for that which the railway company take and acquire and which the proprietor gives up to them. And then in the second place, these provisions contemplate damage to lands which are not taken by the company by reason of the execution of the company's works upon the lands taken.

In this case the jury, following the terms of the claim which was lodged by the landowner in answer to the notice to treat given by the railway company, have found the former entitled to £9500 for loss of business. I do not think that that claim would be sustainable at all if the words in which it is described express the legal category to which the claim itself belongs. It is not founded as stated. You would not discover from the words which are used to describe the sum that it was founded at all as an interest in land; but I entertain no doubt whatever that it was meant to be so, and that it was so treated by the jury. In assessing the value of the property, or in other words, the consideration which the railway company ought to pay for the land or interest in land which they take, it has become the practice to proceed by taking the various items into which that price or consideration is capable of being resolved, and asking the jury to consider these separately.

Now, when a proprietor, instead of letting his land to a tenant, occupies it himself for the purpose of trade, that is a special kind of occupancy which must be taken into account in estimating the value of the land; and I take it that the claim made here, which was affirmed by the jury to the extent of £9500, was intended to cover the loss which Sommerville & Company sustained by reason of their having to give up the occupancy of the saw-mills which the railway company took for the purposes of their undertaking. Upon that footing it is an item which is justly and rightly included in the price. In the view which the majority of the Court below were disposed, I think, to take of it, it was an item which could not be made matter of charge against the railway company. The Lord President points out what is perfectly true, that occupancy may be severed from ownership. The owner may let to a tenant, and in that case the proprietor's claim would cover only the first two items in this finding of the jury. Upon the third item the railway company would in that case have to deal with the tenant and to satisfy his claim for loss of occupancy, which would be greater or less according to the duration of his lease. But then the learned Judge goes on to say this, comparing the case of a proprietor occupying his own premises and that of his letting them to other traders—"Now, does it make any difference that the two characters of proprietor and tenant or occupier are combined in the same person, or does that circumstance of the combination of these two characters affect the nature of the compensation for loss of business which was awarded by the verdict of the jury? I think not." Upon that point I cannot come to the same conclusion as his Lordship. Occupancy is a right incidental to property; it passes with a disposition of property unless it has been severed from it by a lease, in which case the tenant's right becomes a burden upon that of the proprietor. The difference between the two cases—and to my mind the essential difference—is this, that in the one case the disposition of Sommerville & Company carries the whole right of occupancy from the date of entry specified in the deed; in the other case it would not carry any right of occupancy whatever until the expiry of the tenant's lease, and therefore no such item as this would have arisen had the currency of that lease been for a considerable period.

My Lords, it is said that the sum of £9500 is not consideration for any right taken by the company or conveyed to the company by Sommerville & Company. If I am right in saying that it is a sum paid in respect of the company taking from them and becoming possessed of their exclusive right of occupancy, that is not so. Now, the very deed of conveyance in which the consideration is inserted gives the company the right of occupancy. So far as I know it is their only title to it, and if Sommerville & Company had refused to give up possession, or if anyone was to take possession, the railway company's remedy would be in founding upon the deed of conveyance as giving them the right of occupancy, and they have no other title, so far as I can see, to assert. In these circumstances I cannot doubt that they have got in return for that sum the very subject, the very interest in the estate, for which it was intended that compensation should be given.

Upon these grounds I have come to the conclusion, I must say without any hesitation whatever, that the judgment of the Court below ought to be reversed.

Lord Fitzgerald—My Lords, for the reasons given by the noble and learned Lord (the Lord Chancellor) and by the noble and learned Lord opposite (Lord Watson) I am of opinion that the interlocutor of the 22d of January 1886, by which the Court of Exchequer in Scotland determined "that the sum of £9499, 18s. 3d. sterling is not to be reckoned part of the consideration for the sale on which the conveyance mentioned in the case was granted," should be reversed, and that the determination of the Commissioners of Inland Revenue should be restored.

The conveyance in question is undoubtedly a conveyance on the sale of property whereby property was legally transferred to the railway company. What was the property so transferred? The lands in question, the conveyance of the

lands carrying by its very force the right to the immediate possession, and thus determining the occupation of the vendor. From the conveyance the £9499, 18s. 3d. seems to have been apportioned by the jury as compensation for loss of business. But how was that loss occasioned? The answer must necessarily be by the determination on the conveyance of the vendor's right to the possession and occupation of the lands. The conveyance then appropriately goes on to say, "said three sums amounting in all to the sum of £52,658, 6s. 7d." That sum—no matter how you may subdivide it, no matter how you deal with it—is the price to be paid by the railway company in one shape or other for the right to the lands and the immediate occupation, and in my judgment forms the consideration for the sale.

LORD MACNAGHTEN—My Lords, I entirely agree. The Glasgow and South-Western Railway Company required to purchase and take for the purpose of their undertaking certain lands belonging to Messrs Sommerville & Company, who were saw-millers and timber merchants. They were in the occupation of those lands for the purposes of their trade. The railway company gave notice to treat under the Lands Clauses Consolidation Act in the usual form. In answer to that notice to treat Messrs Sommerville & Company sent in their claim; it was a claim in respect of those lands. That was the only claim they could make in answer to the notice to treat. They divided their claim into three heads. That, my Lords, was a convenient mode for enabling the jury to ascertain what was the sum proper to be paid under the circumstances, but still it was purchase money or compensation for the lands, and it was awarded as such—in fact, the jury had no power to award Messrs Sommerville & Company a single farthing except as compensation in respect of the lands.

Now, the Lands Clauses Act prohibits a railway company from entering upon any lands except after payment into the bank, or to the person who claims the compensation, of the purchase money agreed or awarded to be paid. After that it seems to me impossible to contend that this money was not consideration for the sale of the lands.

Judgment appealed from reversed; determination of the Commissioners of Inland Revenue affirmed; respondents to pay to appellants the costs of the appeal to this House and the costs below.

Counsel for Inland Revenue—Att.-Gen. Webster—Lord Adv. Macdonald—Sol.-Gen. Robertson—Young. Agents—W. H. Melville and D. Crole, Solicitors of Inland Revenue.

Counsel for Respondents — Balfour, Q.C.—R. S. Wright. Agents—W. A. Loch, for John Clerk Brodie & Sons, W.S.

COURT OF SESSION.

Wednesday, June 1.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

WESTLANDS *v.* PIRIE.

Parent and Child—Illegitimate Child—Aliment—Mora—Taciturnity.

In 1886 an action for the recovery of inlying expenses, and aliment for thirteen years, was raised by the mother of an illegitimate male child born in 1863. The defender admitted the paternity, but alleged that he had paid inlying expenses at the time of the birth, and, for four years thereafter, had paid aliment, to the pursuer's father, in whose house the child was maintained; that in 1867 he had made an offer to the grandfather to take the child to live with him, which was refused; and that subsequently he had *ex gratia* sent from time to time to the grandfather money for the child's aliment. The child lived with the grandfather until he was seventeen, when he went to live with his mother, who was then married. No claim was made against the defender until just before the action was raised. The Court (*rev.* Lord M'Laren) *assoilzied* the defender.

This was an action raised in 1886 at the instance of John Westland, carter, residing at 4 B Block, Holyrood Square, Edinburgh, and Elizabeth M'Arthur or Westland, his wife, against George Pirie, carrier and contractor, 63 Loch Street, Aberdeen, concluding for (1) the sum of £2, 2s., being the defender's proportion of inlying expenses attendant on the birth of an illegitimate male child on or about 12th June 1863, of whom the female pursuer was the mother, and the defender the father; and (2) aliment for the said child at the rate of £10 per annum from 12th June 1863 until the child attained the age of 13 years complete.

The facts of the case were these—The defender admitted the paternity. At the time the defender had connection with the female pursuer she was a domestic servant at Old Deer, Aberdeenshire, and the defender was a farm-servant in the neighbourhood. Immediately after the birth of the child—which took place in the house of James M'Arthur, Mrs Westland's father—the defender paid to M'Arthur £3 for inlying expenses and aliment, and during the next four years he from time to time paid him further sums of aliment. During these years the female pursuer had two other illegitimate children by other men. The child was maintained by the female pursuer's father, and continued to live in his house until he was seventeen, when he went to live with the pursuers. The defender wrote in 1867, after he was married, to M'Arthur, offering to take the child to live with him, and to provide for it free of expense to its mother or grandfather. This offer was declined, and the defender stated that though he considered that he had thus discharged any legal obligation incumbent on him, he yet con-