

HOUSE OF LORDS.

Thursday, April 1, 1909.

(Before the Lord Chancellor (Loreburn),
the Earl of Halsbury, Lords Ashbourne
and Macnaghten.)

RHONDDA URBAN DISTRICT COUNCIL v. TAFF VALE RAILWAY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL
IN ENGLAND.)

*Railway—Construction and Maintenance
—Road Crossing Railway—Width of
Bridge and Approaches—Duty on Rail-
way to Widen—Railways Clauses Con-
solidation Act 1845 (8 and 9 Vict. c. 20),
sec. 51 (cf. 8 and 9 Vict. c. 33, sec. 44).*

The Railways Clauses Consolidation Act 1845 provides, by section 51, as to roads crossing a railway by bridges, that where a bridge has been built to the original width of the road but not up to the maximum prescribed by the Act, when the road is subsequently widened the railway is bound to widen the bridge.

Held that the liability of the railway company under the section extended only to the bridge actually intersecting the railway line and not to the approaches thereto.

In an action by the District Council (appellants) against the Railway Company to have the extent ascertained of the Railway's liability to widen a road-bridge over their line and the approaches to the bridge, under the Railways Clauses Consolidation Act 1845 (8 and 9 Vict. c. 20), sec. 51, it was held by PHILLIMORE, J., that the liability of the Railway extended only to the bridge itself and not to the approaches to the bridge. This was reversed by the Court of Appeal upon the ground (not here reported) that the Railway Company were relieved by the terms of their private Act from any duty of widening the bridge itself or the approaches.

The District Council appealed.

The terms of sections 46, 49, 50, and 51, cited in their Lordships' judgments, are identical with those of the Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33), secs. 39, 42, 43, and 44.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—Your Lordships have already disposed of the first point raised in the argument of this appeal (*not here reported*). The second point, now to be resolved, is whether the duty of widening a bridge imposed in certain contingencies upon a railway company by sec. 51 of the Railways Clauses Act 1845, relates to the entire structure erected to carry a road over a railway, or relates only to that part of it which actually crosses the railway line. It is true that sec. 51 is framed as a proviso upon preced-

ing sections. But it is also true that the latter half of it, though in form a proviso, is in substance a fresh enactment, adding to and not merely qualifying that which goes before. So the question really turns upon sec. 51 itself. But it must be read in the light of what goes before and with a close regard to the purpose of the group of sections to which it belongs—namely, to provide for the dimensions of roads and not for the dimensions of railway works except so far as they affect roads. It is very loosely expressed, and in order to be readily understood some explanatory words must be read into it, deriving the sense from secs. 46, 49, and 50. [*cf.* 8 and 9 Vict. c. 33, secs. 39, 42, and 43.] In sec. 51, lines 2 and 3, "Roads within fifty yards of the points of crossing the same" must mean "roads within fifty yards of the points where road and railway cross each other." The words preceding sec. 46, and governing this group of sections, speak of "the crossing of roads," and, as secs. 46, 49, and 50 show, relate both to the case where a railway is carried by a bridge over the road and to the case where the road is carried by a bridge over a railway. The term "crossing of roads" is applicable whichever is uppermost, and means the intersection of road and railway, either on a level-crossing or by means of a bridge carrying either road or railway. Points of crossing mean points where the intersection commences. So again in sec. 51, lines 3 and 4, "the width hereinbefore prescribed for bridges over or under the railway," must mean "the width hereinbefore required for the road, whether over or under the railway, when there is a bridge." It cannot mean the width of the bridge on a cross section of the bridge where the railway is carried over the road by a bridge. Nothing in these sections concerns itself with the width of the railway bridge in that sense. Where the railway crosses the road on a bridge, sec. 49 requires that the "width of the arch" shall be such as to leave thereunder a clear space of 35 ft., or 25 ft., or 12 ft. for the road beneath. It is the width of the road which alone is aimed at, and a corresponding longitudinal width of arch is prescribed. On the other hand, sec. 50 requires that where the road crosses the railway on a bridge, the "road over the bridge" shall be 35 ft., or 25 ft., or 12 ft. wide. What sec. 51 contemplates is the case of the road within fifty yards of the points of intersection being narrower than the width required to be provided for the road, whether by the span of the arch overhead or by the width of the bridge which carries the road over the railway. In other words, "width" in the sec. 51 means two things—either the width of the arch longitudinally or the width of the road over the bridge, as the case may be. So again in section 51, line 5, "the width of such bridges need not be greater than such average available width of such roads" means "the width of the arch or the width of the road over the bridge, as the case may be, need not be greater than such average available width of such roads." The

reasoning is the same as already explained. So again in section 51—"So nevertheless that such bridges be not of less width in the case of a turnpike road or public carriage road than 20 ft." This must mean "that such bridges give not less width for the road . . . than 20 ft." To put the point generally, so far as the first half of section 51 is concerned, the purpose throughout is to provide for the width of the road, whether carried over or under the railway, and the elliptical language of the section, to have a meaning, must be so expanded. If this be so, then the latter half of the section 51, which by the use of the word "such" borrows the fuller language of the first half, must be also expanded in the same sense. "The average available width of any such road" means the width at the points of intersection between road and railway, and the average is to be taken of the fifty yards adjoining those points of intersection. "The width of such bridge" and "the width of the said bridge" mean "the width of arch or of road over the bridge, as the case may be." And "the maximum width herein or in the Special Act prescribed for a bridge in the like case over or under the railway" means "the greatest width which this or the Special Act imposes, whether for arch or for road, over the railway, in the cases respectively of the railway being carried over the road, or the road over the railway, as the case may be." Applying this, which seems to me the only construction practicable, the result in the present case will be as follows—Inasmuch as the road on one side adjoining the point of crossing, measuring the average for fifty yards from that point, has been increased in width since the construction of the railway beyond the width of such bridge (that is to say, the bridge actually intersecting the line and slopes or embankment thereof), the railway company are bound to increase the width of that bridge where it so actually intersects. I will only add that, as already indicated, the word "bridge" in this section 51 means that part of the structure within the points of crossing or intersection. I think that we are driven by the very framework of the section so to construe it. It is also used in the same sense, as contrasted with the immediate approaches, certainly in some parts of sections 46 and 51, and in that sense alone in section 50. I do not express any opinion whether or not the word bridge may admit a different construction in other parts of section 46 or 51. I am glad to know that all the Judges who have heard this case agree with this view of the meaning of the word "bridge" in section 51.

EARL OF HALSBURY—I am unable to resist the conclusion to which the reasoning of the Lord Chancellor has brought me. Confining myself, and intending to confine myself, simply to the question with which the Lord Chancellor has dealt—namely, whether the word "bridge" in section 51 is to be construed as he has construed it—I agree. I think that it must be

so construed. I do not think it is right or desirable to add anything which might give rise to further litigation between the parties. There has been an old controversy, from Magna Charta downwards, as to the divided responsibility where bridge and road and road and bridge come together, and how much of the bridge forms part of the road, so as to throw upon other authorities the responsibility for repair which was supposed to be settled by the Act of Henry VIII, which fixed a distance of 300 ft. from the end of the bridge, and settled the responsibility for such part of the roadway as was 300 ft. from the end of the bridge. But be that as it may, all that I wish to say at present is that I absolutely confine my judgment, at all events, to that question with which the Lord Chancellor has dealt, namely, the use of the word "bridge" in section 51. I think that it is impossible to resist what he has pointed out as a meaning of it in that section, and so far I am prepared to agree with the judgment which he has proposed. As to the consequences which may follow from it, as I have said, I do not think it desirable to say anything more than that I am satisfied that it is the true construction of the word "bridge" as used in section 51.

LORD ASHBOURNE—I agree with my noble and learned friend on the Woolsack.

LORD MACNAGHTEN—Your Lordships have already decided that the rights and liabilities of the parties to this controversy must be governed by the Railways Clauses Consolidation Act 1845, and that consequently the bridge which is the subject of the present litigation must be widened. So far the District Council has succeeded. But there remains the more important and more difficult point as to the extent of the obligation imposed on the Railway Company. That depends on the question, What is the meaning of the word "bridge" in section 51 of the Railways Clauses Consolidation Act? Speaking for myself, I rather hesitate to join in the strictures which have been passed on the wording of the section now under consideration. The language is compendious, no doubt; possibly it might have seemed less obscure if brevity had been studied less. But, after all, the meaning is tolerably plain. The difficulty, such as it is, comes, I think, from the circumstance that the draftsman had in his mind the state of things at two different periods of time. There was the state of things when the Bill for the company's Special Act was pending in Parliament, and there was the state of things that would be brought about by the completion of the railway. The draftsman deals with them both in the same breath. The section speaks of "existing roads" and "the points of crossing the same," using the plural "points" because the roads are spoken of in the plural, for when the Act speaks of a road in the singular, as it does in the next section—section 52—it speaks of "the point of crossing the same." The point of crossing is, I think, the point

on the delineated plan where the line of the intended railway is drawn across the road. Then, although a road crossing the line of the railway may be altered or diverted or a new road may be substituted for an old one, it speaks of "such road" as if it were identically the same road as existed before the railway was made. Now, it seems to me that in the whole of this group of sections headed by the words "with respect to the crossing of roads or other interference therewith," there is no single instance where the word "bridge" is used to mean anything but the structure which spans the road or the structure which spans the line of railway, as the case may be—the bridge proper, as it has been called for the sake of convenience. The sections which mention bridges are sections 46, 49, 50, and 51. Section 46 speaks of the bridge "with the immediate approaches and all other necessary works connected therewith," showing that the word bridge was not intended to mean anything more there than the bridge proper. Section 49, dealing with bridges to be erected for the purpose of carrying the railway over roads, requires that the width of the arch of the bridge should be such as to leave a clear space thereunder of prescribed width, showing again that the section was only dealing with the span of the bridge over the road. Section 50 requires that when a road is to be carried over the railway it is to have a clear space of prescribed dimensions "between the fences thereof." "The fences thereof" are the fences "on each side of the bridge," which are to be 4 ft. high. That, again, is the bridge proper, for the fences "on each side of the immediate approaches of such bridge" are of a different height. They are not required to be more than 3 ft. high. When we come to section 51 reference is made to the width already "prescribed for bridges over or under the railway." And then follows the provision which requires the company to increase the width of a bridge in case after the construction of the railway the average available width for the passing of carriages of the road within fifty yards of the point of crossing the railway is increased on either side thereof beyond the width of the bridge. Reading all these sections together I think it plain that the width of the bridge in that provision must mean the width of the bridge proper. Several cases were referred to in the argument. The one which throws most light upon the point in controversy is the case of *Reg. v. The Birmingham and Gloucester Railway Company*, mentioned in a note at p. 51 of the report of the same case at a later stage in 2 Q.B. 47. That was also a contest between a railway company and a road authority. But in that contest, curiously enough, the position of the parties in argument was reversed. The railway company under their Act, which was passed in 1836, and contained sections identical with those in the Taff Vale Act of the same year, had made a road in substitution for one which existed at the time when they obtained their Act, but they had made it of less

width than the old road. They contended that as they had made it of the width prescribed for a "bridge" they had done all that they were required to do; the approaches, they said, were part of the bridge. In delivering the judgment of the Court Lord Denman, C.J., said this—"The question is whether a *mandamus* lies to this company directing them to restore a turnpike road carried over a railway to its former width. *Prima facie* they are bound to make the road so lifted over the railway as wide as it was before, though there is a provision that the bridge in such a case shall be 15 ft. wide, dispensing, no doubt, with any greater width in that part. But we are clearly of opinion that the maximum is confined to that part of the road which can strictly be called the bridge, and can by no means import into this case the doctrine laid down with an entirely different object that the approaches to a bridge form a part of it, by which the road might be narrowed to a great extent beyond the bridge on either side." I am of opinion that the Railway Company are right on this point, and that the judgment of Phillimore, J., should be restored, but without costs, and that as the District Council has succeeded in part and failed in part, there ought to be no costs of this litigation either here or below.

Judgment of Phillimore, J., restored.

Counsel for Appellants—Upjohn, K.C.—Lush, K.C.—Trevor Lewis. Agents—Smith, Rundell, & Dods, for Morgan, Bruce, & Nicholas, Pontypridd.

Counsel for Respondents—Levett, K.C.—P. O. Lawrence, K.C.—J. G. Wood. Agents—Williamson, Hill, & Company, for Ingledew & Sons, Cardiff.

HOUSE OF LORDS.

Friday, April 2, 1909.

(Before the Lord Chancellor (Loreburn),
 Lords Macnaghten, James of Hereford,
 and Shaw.)

JONES v. GREAT CENTRAL RAILWAY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL
 IN ENGLAND.)

*Process—Proof—Evidence—Confidentiality
 Letters between Litigant and his Trade
 Union concerning Action.*

By the rules of a trade union its members were entitled to legal assistance in case of unjust dismissal from their employment. The appellant was a member who had been dismissed from the employment of the railway company. He corresponded with the secretary of the trade union in order to satisfy the union that a solicitor should be employed. In the appellant's action