proceed on the assumption that they are unreducible. Proceeding then on this assumption, the question is, whether in adjusting the locality of augmentation Miss Robertson may not be dealt with so as to give her relief against injury sustained in previous localities?—whether, since she pays too much of the old stipend she may be allowed to pay proportionally less of the new stipend. The proposal is equitable, and if there is no technical difficulty I am disposed to acceed to it. In doing so an injury is in a certain sense done to the benefice, for if the relief craved were not given, the benefice would reap the benefit of the overcharge in the previous localities. But, on the other hand, if we do not acceed to this proposal Miss Robertson might in the end have to pay to the minister something more than the whole teinds of her lands, and I do not think that any one could be heard in support of that result, for it would come to this, that on account of a mistake the benefice would get more than the whole teinds.

Thus, I think, the only question is between Miss Robertson and the other heritors; and although I was startled by the novelty of the proposal submitted to us, I do not see any objection to it in point of principle. It is a remedy which falls within the working out of a process of locality—which is the counterpart of a multiplepoinding—and in such a process I do not think that it is unfair to take into consideration the present liabilities of parties.

The other Judges concurred.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Objectors—Adam. Agent—James Allan, S.S.C.

Counsel for Common-Agent—Hall. Agent—James Macknight, W.S.

Thursday, February 27.

SECOND DIVISION.

A *v.* B.

Divorce—Domicile—Jurisdiction.

Where a defender in an action for divorce admitted having been born in Scotland in 1836, having resided there until 1860, having then gone to London, married, and resided there until 1870, when he went to India, from which he returned in 1871, since which time he resided in Scotland until the date of the action, and where the adultery was committed in Scotland—*held* that a plea of no jurisdiction, in respect defender was a domiciled Englishman, advanced for the first time on a reclaiming note, was inadmissible.

The summons in this suit, at the instance of A against her husband, concluded for divorce on the ground of adultery. The pursuer stated that she and the defender were married in England on 7th September 1865; that the defender was born in Edinburgh, and was about thirty-six years of age at the time of the action; that up to the year 1860 he had lived entirely in Scotland; that in 1860 he went to London, and remained there until 1870, when he went to India, from which he returned in 1871; and that, since that time, he had resided in Edinburgh. She also stated that on March 1872 the defender was convicted in the Sheriff Court of Edinburgh, and was sentenced to sixty days' imprisonment in the Calton Jail there, and he was undergoing sentence at the time the action was raised. The defender denied that he had resided in Edinburgh since July 1871. *Quoad ultra* he admitted the pursuer's statements as abovementioned, with the explanation that the defender returned from India shortly after going there, and that he sometime afterwards visited Scotland, which he did for the purpose of starting a company to run the Kirkcaldy and London Steamboats, and that he afterwards returned to London to attend business in connection with the said company, but subsequently returned to Scotland.

The adultery was alleged to have been committed in Edinburgh during 1872. The defender denied the alleged adultery, but took no other plea on record. On 17th July 1872 the Lord Ordinary found the adultery proved, and granted decree of divorce. The defender reclaimed, and abandoned the case on its merits, and for the first time advanced the plea that he was a domiciled Englishman, and the marriage having been entered into in England, the Courts of Scotland had no jurisdiction, it resting with the pursuer to prove the Scottish domicile. Authorities cited, *Ranger* v. *Churchill*, 15th Jan. 1860, 2 D. 307; *Jack* v. *Jack*, 24 D. 467; *Oldaker*, 12, S. 468; *Pitt*, 4 Macq. 627; *Warrender*, 2 S. & M. 192; Fraser's Per. and Dom. Relations, 746; Erskine, 1, p. 42 (Nicolson's edition).

At advising—

Lord Benholme—I find quite enough on record to satisfy me of the domicile being in Scotland.

Lord Cowan—I think it is too late after the record has been closed, the proof closed, and judgment delivered, to advance this plea. I am not prepared to admit it as relevant, even if true. A Scottish domicile is admitted on record, and I hold it indispensable to exclude our jurisdiction that the defender should on record have pleaded his English domicile. I do not feel called on to admit any alteration on the record, so as to raise a new issue.

Lord Neaves—I scarcely think we are entitled to go back where a defender alleges facts such as here, inferring a Scottish domicile.

Lord Justice Clerk—Even now we have no definite statement from the defender. The record amounts to an admission of Scottish domicile, and of our jurisdiction.

The Court adhered.

Counsel for Pursuer—Mackintosh. Agents—M'Kenzie & Black, W.S.

Counsel for Defender—Mair. Agent—Wm. Officer, S.S.C.

Thursday, February 27.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

COCHRANE *v.* JACKSON.

Stipend—Reference to Oath—Prescription.

Where a claim for arrears of stipend was referred to oath, terms of answer by deponent

held to import part of a previous process of augmentation and locality into the oath.

This suit was brought under the following circumstances. On 9th February 1853 the Court of Teinds granted the first minister of the united parish of Cupar-in-Fife and St Michaels of Tarvit an augmentation of stipend. Thereafter, on 2d February 1855, an interim scheme of locality was approved of. On this interim decreet the minister charged Thomas Jackson, writer, Kirkcaldy, to make payment of £20, 17s. 6d., being alleged arrears of stipend due to him for certain lands in the parish from the year 1852 to 1868. Jackson brought a suspension of this charge, in which he made the following averments—"The complainer is not aware what lands are referred to under the name of 'Saint Michael's acres,' from which the said arrears of augmentation and stipend are alleged to be due to the respondent; but that name may apply to a property in the united parish of Cupar and Saint Michaels, to the *dominium directum* of which the complainer has right under an absolute disposition, qualified by a back obligation, to be now adverted to. By disposition by the National Bank of Scotland, heritable proprietors of the subjects and others thereby disponed, with consent of Andrew Thallon, sometime farmer of Ramornie Mains, thereafter of Cowdenlaws, in the parish of Wemyss, and the said Andrew Thallon for all right, title, and interest which he had in said subjects, in consideration of the sum of £200 sterling, paid to said bank by David Pearson, writer, Kirkcaldy, and the complainer, as the price thereof, the said bank and the said Andrew Thallon disponed to the said David Pearson and the complainer the piece of arable land, consisting of between one and two acres, of the lands of Nether Tarvit and Little Tarvit, with the pertinents, lying on the west side of the highway formerly called the New Causeway, which led to the house called the Leprose House, and to the Gairley Bank, all lying and bounded as mentioned in said disposition, dated 18th November 1852 and 9th January 1853. By back obligation granted by the said David Pearson and the complainer in favour of the said Andrew Thallon, it was set forth that, although the several subjects specified in said obligation, including those referred to in the preceding article, were conveyed absolutely and irredeemably, it had been agreed that, on payment of the several sums of money advanced by the said David Pearson and the complainer, and expenses laid out in securing themselves therein, or making repairs thereon, or otherwise, they should reconvey the same to the said Andrew Thallon and his heirs or assignees, conform to said back obligation, dated 5th June 1854. Before the said disposition by the said bank and the said Andrew Thallon was granted, the whole subjects thereby conveyed had been feued to various individuals, and the only right conveyed by said disposition was that of the *dominium directum* of said subjects. By a series of deeds following upon said disposition so granted by the said bank and the said Andrew Thallon, the *dominium directum* of said subjects is now vested in the complainer, under the qualifications specified in said back obligation. According to the terms of the pretended interim decreet on which the complainer is charged, it is only those who are intromitters with the rents and teinds of said parish who are liable in payment of stipend to the respondent; but the complainer has not, and never has been, an intromitter with said rents and teinds to any extent, as the alleged successor or representative, and as coming in room, of the said Andrew Thallon, or otherwise, and he is therefore not liable in payment of stipend to the respondent. The complainer believes and avers that, in the process of augmentation, modification, and locality, on which the said interim decreet and warrant proceed, the said Andrew Thallon was not called and did not appear. As he merely possessed the ultimate right to the *dominium directum* of the lands conveyed by the said bank and him as aforesaid, he was not liable to be localled upon in respect thereof, but only those who possessed the *dominium utile* of said lands. In the interim locality in said process, on which said interim decreet and warrant proceed, the said Andrew Thallon, and the said lands of Saint Michael's acres, are localled on for part of the stipend due to the respondent. After the said David Pearson and the complainer became disponees of the said National Bank and Andrew Thallon, as aforesaid, they lodged objections, on 10th June 1856, to said interim locality, on the ground that they only possessed the *dominium directum* of the property so disponed to them, and they specified the names and designations of those who possessed the *dominium utile*. These objections were allowed to be received and seen. They are undisposed of. In the circumstances stated, if the complainer were to pay the sums which he is charged to make payment of, he would, although such objections were sustained, have no right of relief for said sums or of repayment thereof, against any of the heritors or other intromitters with the rents and teinds of said parish. The said charge does not bear that the said Andrew Thallon or the complainer is mentioned *nominatim* in said interim decreet and warrant, and it is averred that the complainer is not mentioned *nominatim* therein. The complainer further avers that the specific sums charged for are not due and resting owing the respondent."

The pleas in law for the complainer were—"(1) The charge complained of being illegal and incompetent, in respect that it charges the complainer to make payment of the said alleged arrears of augmentation and stipend, and that to the respondent and his successors in office, it ought to be suspended. (2) The complainer never having intromitted with the rents and teinds of any lands in said parish, and never having had any right, heritable or personal, to do so, he is not liable in payment of stipend to the respondent. (3) The complainer having only the *dominium directum* of any lands possessed by him in said parish, he is not liable in such payment. (4) *Separatim*.—The complainer being only an heritable creditor as regards the said subjects disponed by the National Bank of Scotland and the said Andrew Thallon as aforesaid, he is not liable in payment of stipend to the respondent in respect of said subjects. (5) The sums charged for, in so far as alleged to have been due upwards of five years, are prescribed. (6) As the complainer, if he pays the sum charged for, will have no right of relief against, or of repayment from, the heritors or other intromitters with the rents and teinds of said parish, the said interim decree and charge ought to be suspended. (7) The complainer not being mentioned *nominatim* in the pretended interim decreet and warrant, and the precise sums alleged to be due by him not being specified therein, and no such sum being

due and resting-owing to the respondent, the said charge ought to be suspended."

The pleas in law for the minister were—"(1) The reasons of suspension being irrelevant, ought to be repelled. (2) It is incompetent to rectify or quash an interim decree of locality by process of suspension. (3) The complainer having failed to insist in his objections in the locality process, and to obtain a judgment therein, is precluded from challenging the interim decree of locality by any separate process. (4) The complainer's reasons being unfounded in fact and in law, ought to be repelled, with expenses."

On 10th February 1870 the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties on the complainer's first and seventh pleas in law, to the effect that the charge brought under suspension is illegal and incompetent, and having considered the argument and proceedings, repels said pleas in law, except in so far as the seventh plea assumes that the sums charged for are not due by the complainer; and, under a reservation in the meantime of all questions of expenses, appoints the case to be enrolled, to be further proceeded with.

"*Note.*—If the complainer's pleas, now repelled, had been well founded, any consideration of his other pleas, which relate to what may be called the merits of the claim made against him, would have been unnecessary. Both parties therefore concurred in asking judgment on the pleas now disposed of before the case was further proceeded with.

"The Lord Ordinary, being very clearly of opinion that the complainer's pleas now repelled are ill founded, has had no hesitation in repelling them.

"The ground on which the complainer endeavoured to support his first and seventh pleas was, that, as he was not named in the decree of locality charged on, and is only proceeded against as having come into the place of one Thallon, who is said to have been an heritor when the decree was pronounced, it was necessary to have constituted his liability by action. But the Lord Ordinary does not think so. A general decree against heritors and others, such as that here in question, was undoubtedly competent, and is in accordance with the ordinary form and practice. And it is equally undoubted that the respondent, as minister, was entitled in virtue of such a decree to charge the complainer as being an heritor now liable, although all the heritors be dead that were alive at its date. (Erskine, 4, 3, 11; and Connell on Tithes, vol. i, pp. 97-8. And the respondent was also clearly entitled to charge the complainer on and in virtue of the decree of locality without the necessity of raising and expeding letters of horning, 1 and 2 Vict. c. 114, § 1 and 3.

"Whether the complainer can show that he is not liable to the respondent in the sums charged for on the ground that he is not an heritor or any other ground, is a question which will now fall to be determined under his pleas other than those which have been repelled. The case has accordingly been ordered to the roll that it may be further proceeded with."

Thereafter, on 18th May 1870, the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties, and considered the argument and proceedings, including the minute for the complainer, No. 18 of process, Finds that by said minute the complainer has consented to the present process of suspension being disposed of 'on the footing that the last five years' stipend claimed by the respondent (viz., 19s. 2d., being stipend crop 1864, at fiars prices; £1, 6s. 1d., being stipend crop 1865 at fiars prices; £1, 12s. 2d., being stipend crop 1866 at fiars prices; £1, 13s. 6d., being stipend crop 1867 at fiars prices; and £1, 13s. 8d., being stipend crop 1868 at fiars prices) are due and payable to the respondent from the said lands of St Michael's Acres, and have not been paid to him:' Finds, as regards the stipend claimed by the respondent as having become due prior to said five years, that the same is prescribed, in terms of the Act 1669, cap. 9, and can only now, in terms of that Act, be proved to be due and resting-owing by the oath or writ of the complainer. Therefore, and in respect of these findings, as regards the foresaid last five years' stipend claimed by the respondent, repels the reasons of suspension, finds the letters and charge orderly proceeded, and decerns: *Quoad ultra*, before further answer, and under a reservation in the meantime of all questions of expenses, appoints the case to be enrolled, in order that the necessary orders may be taken in regard to the matters not now disposed of.

"*Note.*—The only point attempted to be made on the part of the respondent at the last debate was, that because the complainer does not aver that he has paid any part of the stipend in question, the whole must be held to be due by him, and that the plea of prescription is therefore inapplicable. The Lord Ordinary cannot adopt this view, the more especially as he finds that the complainer has, in article 12 of his statement of facts, expressly averred that the sums charged for 'are not due and resting-owing to the respondent,' and has stated a corresponding plea in law (the seventh) to the same effect."

On 5th November 1872 the following interlocutor was pronounced:—"The Lord Ordinary having heard parties' procurators on the question whether the constitution or the resting-owing of the sums sued for, so far as not found due by interlocutor of 18th May 1870, have been, by the writs recovered and now in process, established *scripto* of the complainer: Finds that they have not, and *quoad ultra* appoints the case to be enrolled, that the respondent may, if so advised, put in a minute of reference to the complainer's oath, or that the case may be otherwise disposed of.

"*Note.*—The Lord Ordinary, having regard to the terms of the Act 1669, can see no sufficient ground for holding that the respondent has instructed *scripto* of the complainer the constitution or the resting-owing of the sums referred to in the preceding interlocutor. The respondent could point out no writing or express admission, judicial or otherwise, of the complainer to this effect. All he contended for was, that as the complainer had not specifically alleged on record that the sums in question were ever paid, either by him or the party Thallon, his alleged predecessor in the lands in question, out of which they were payable, the constitution at least of the debt must be held to be sufficiently established by inference and implication. But the Lord Ordinary cannot accede to this view, which he thinks unsound in principle, and, so far as he is aware, is unsupported by any authority."

The whole cause was then referred to the oath of the suspender. Amongst other answers the suspender deponed when put on his oath, and asked, Is statement X. on your record a true statement? "I have not the locality, but I have no doubt it is true." Also, when asked, Are all your statements on record true? he answered, "I think so."

On 14th January 1873 the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties on the import and effect of the complainer's oaths, Finds the same to be negative of the reference: Therefore, *quoad* the sums charged for other than those found due to the respondent by interlocutor of 18th May 1870, suspends the letters and charge complained of, and decerns: Grants warrant to, authorises, and ordains the National Bank of Scotland to pay to the respondent the sum of £7, 4s. 7d., found due to him by said interlocutor of 18th May 1870, and to the complainer the sum of £13, 12s. 11d., being the balance of the consigned sum of £20, 17s. 6d., with the interest accruing on these two sums to each of the parties respectively, and authorises the Bill Chamber Clerk, or other custodier, to deliver up the deposit receipt, that payment may be made accordingly; and in regard to the question of expenses of process, Finds neither party entitled to expenses, the one against the other, down to, and inclusive of, said 18th of May 1870; and finds the complainer entitled to expenses subsequent to the date: Allows an account thereof to be lodged, and remits it, when lodged, to the Auditor to tax and report.

"*Note.*—It is unfortunate that so much litigation should have taken place, and consequently so much expense incurred—about £20; but the Lord Ordinary had of course no alternative but to deal with the case as it was presented to him.

"Since the 18th of May 1870 the litigation has related to the respondent's endeavours to establish his claims so far as not found due to him by the Lord Ordinary's interlocutor of that date, first, by the writ of the complainer, and secondly, by his oath. It has been found by interlocutor of 5th November 1872, that the respondent had failed in the first of these endeavours, and he has now, by the present interlocutor, been found to have failed in the second.

"In regard to the complainer's oath, the question is not *quid verum est* but *quid juratum est.* So dealing with the oath, the Lord Ordinary has found it impossible to arrive at any other conclusion than that it is negative of the reference.

"It cannot be, and was not contended, that the complainer has directly acknowledged either the constitution or the resting-owing of the stipend in question. The contention of the respondent has been merely to the effect that it must be inferred from the complainer's oath, taken in connection with the writings alluded to in it, and particularly the proceedings in the augmentation and locality, that he is liable to the respondent in the stipend charged for. But the Lord Ordinary has felt himself unable to adopt this view. The respondent had formerly an opportunity of instructing his claims by the writs founded on by him for that purpose; but they were held to be insufficient. He then referred the matter to the complainer's oath, and now he says the allusions therein made to the writs, which had been previously found to be insufficient, are to be held as sufficient to establish his case. This was, in effect, the nature of respondent's argument, as the Lord Ordinary understood it, and so understanding it, he has had little hesitation in holding it to be untenable. The process of augmentation and locality is not produced in the present process at all. There has only been produced of or connected with that process the locality (No. 61 of the present process) of 9th February 1853, commencing with crop and year 1852, and an interim decree (No. 14 of process) of dates 9th February 1853 and 2d February 1855, but in neither of these writs is the name of the complainer mentioned. These writs, therefore, cannot in any view that can be taken of them, either by themselves or in connection with the complainer's oath, be held to get over the prescription established by the statute 1669, cap. 9, which enacts that ministers' stipends 'not pursued within five years after the same are due, shall prescribe in all time coming,' except the same 'shall be offered to be proved by the defenders their oaths, or by a special writ under their hands, acknowledging what is resting-owing.'

"Having regard to the terms of the statute, it would rather appear that, although the whole augmentation process had been imported into and made part of the complainer's oath, the respondent could not be held to have prevailed. But the augmentation process in its entirety cannot, in any view that can be taken of the complainer's oath, be held to have been made a part of it. As the oath stands, it may well be doubted whether any of the writs spoken to by the complainer can be held to have been made parts of his oath in such a manner as to entitle the Court to consider them in determining its true import and effect. In the case of *Boyd* v. *Kerr*, June 17, 1843, 5 D. 1213, although it was held to be competent, in the examination of a party under a reference to his oath, to place documents before him with the view of assisting his memory, and to question him on the subject, or even to show him a document irrelevant to the cause, the Court could not consider such document with the view of contradicting the oath; and in the case of *Gordon* v. *Pratt*, Feb. 24, 1860, 22 D. 903, it was held that although a party produced documents on the opposite party's call, and deponed that they all had relation to the matter referred to and were genuine, that they were not imported into the oath so as to form part of it—the Lord Justice-Clerk, now the Lord President, remarking that 'proof by writ *or* oath does not mean proof by writ *and* oath; if the defender fail to prove his case by writ, he can have recourse to reference to oath, but he is then confined to the oath as his only evidence—the reference to oath being a judicial contract that the case is to be determined by what his adversary shall depone.'

"In regard to the question of expenses, it is sufficient to say that the Lord Ordinary has found neither party entitled to any prior to the interlocutor of 18th May 1870, because prior to that date neither party was wholly successful; but he has found the complainer entitled to expenses subsequent to that date, because he has been since then wholly successful."

The minister reclaimed.

Authorities cited—*Boyd*, 5 D. 1213; *Hunter*, 13 S. 369; *Gordon*, 22 D. 903.

At advising—

Lord Justice-Clerk—This case involves some important questions. It arises in a suspension of

a charge for stipend, at the instance of Dr Cochrane against Mr Jackson, the suspender, for arrears of stipend for a number of years. The ground of the charge is that he, Jackson, is now in possession of lands which have been localled on, although Andrew Thallon's name appeared in the interim decreet as proprietor. The plea of prescription was sustained with regard to all but five years of the period, with regard to which the complainer consented to decree against him. The whole cause was then referred to the oath of the suspender, and what we have to decide is, *quid juratum est*, Has the minister proved his claim to be due and resting-owing? Now, the ground of success must be found in the oath, and the questions come to be—(1) Was Andrew Thallon localled on in respect of those lands in the interim locality? (2) Did Jackson acquire those lands, and was he an intromitter with the rents?

Now, I am clear he was localled on in respect of these lands. A good deal of argument has been addressed to us as to whether the whole process of augmentation and locality was not imported into the oath. I think the law is clear that the whole proof must be derived from the oath, but documents may be put to the party, and his answers form part of his oath. On this point the case of *Hunter* v. *Geddes* is instructive. But it is quite another matter *per aversionem* to incorporate into the oath matter in regard to which no question had been put to the referee. The case of *Gordon*, reported in 22 D., lays down the principles applicable to that case. Applying the principles laid down in these cases, I think that condescendence 10 of the process of augmentation forms part of the oath, and that it is clear from it that Thallon was localled on in respect of the lands in question. On the second question—whether Pearson and Jackson acquired these lands—I am clear it is proved by statement 10 and whole tenor of the oath. What the question of identity is I cannot see, and I cannot take Jackson's answers, considering his appearance in the locality.

The question then comes to be, Did Pearson or Jackson take the place of Thallon, and is that proved by the oath. I do not go into the questions argued before us as to the minister's remedy against a singular successor of the proprietor. I rather think that the minister is not bound to wait for rectification of a locality, and that it is not necessary to give the minister recourse against a singular successor that his name appear in the locality. But that is not the question here. We must take it as the case stated in condescendence 10—that Pearson and Jackson were mere superiors and not intromitters. The result comes to be that it does not appear that Jackson ever held the place of Thallon in these lands. There was a kind of *pro indiviso* title, *ex facie* of the conveyance to Pearson or Jackson, but it does not appear that any possession followed on that title, either by Pearson or Jackson; after a few years the lands were conveyed to Welsh, and the footing of his holding is not cleared up, or that of Mackenzie, his successor. I cannot find, therefore, ground in the oath for sustaining the charge; there is a flaw in the substance of the whole case, and Jackson did not come into the place of Thallon till he got conveyance from Mackenzie in 1870. I am therefore of opinion we should adhere to the interlocutor of the Lord Ordinary.

The other Judges concurred.

The Court adhered.

Counsel for Reclaimer—Solicitor-General and C. Smith. Agents—Boyd, Macdonald, & Lowson, S.S.C.

Counsel for Complainer—L. Mair. Agent—J. Barton, S.S.C.

Friday, February 28.

SECOND DIVISION.

[Lord Jerviswoode, Ordinary.

STEUART *v.* SOUTER.

Assessment—Construction—29 *Vict. c.* 67, ℣ 70.

Where an engineer had reported of a suspension bridge that the whole of the timberwork was in such a state of decay that immediate repair was indispensable, and where the eventual cost of the alterations amounted to a considerable sum—*held* that the alterations amounted to a reconstruction of the bridge, the cost of which fell to be defrayed by a special assessment, under 29 Vict. c. 67, ℣ 70.

The question here was raised on a note of suspension and interdict for A. Steuart of Auchlunkart, in the parish of Boharm, and county of Banff, complainer, against Alexander Souter, writer in Banff, collector of assessments appointed under 29 Vict. c. 67,—respondent, setting forth that the complainer had been served with a notice of assessment, and threatened to be proceeded against under a summary warrant at the instance of the respondent, for payment of £202, 11s. 1d. of assessments for roads applicable to the complainer's lands, and craving their Lordships to suspend the warrant, and discharge the respondent from proceeding against the complainer.

Sections 61, 62, 68, 70 of the Banffshire Roads Act, 1866, are as follows:—

"℣ 61. Within six months after the first general meeting of the trustees, they shall cause to be made a list of all the bridges within the county, or upon the boundaries between the counties of Banff and Aberdeen, and Banff and Elgin, excepting the Bridge of Spey at Boat of Bog, near Fochabers, as aforesaid, and such list shall be settled and approved of at the first general meeting of trustees thereafter, and such bridges shall be denominated county bridges; and at any Michaelmas general meeting of the trustees, notice may be given of any proposed alteration on such list of county bridges, which shall be disposed of by the next Michaelmas general meeting of the trustees, and in such list may be included any new bridge which it is proposed to build: And the expense of building any such new bridge, or rebuilding, in whole or in part, any existing bridge, the same in either case being then upon the list of county bridges, provided the expense shall amount to the sum of two hundred and fifty pounds and upwards, but not otherwise, may be raised and paid, in whole or in part, as the case may require, by means of a special assessment to be imposed and levied by the trustees, conform to the valuation rolls aforesaid, on and from the proprietors of all lands and heritages within the county; but it shall be lawful for the trustees to provide that such expense shall be paid by instalments, distributed over a series of years not exceeding ten.

"℣ 62. If the said Boharm Suspension Bridge shall at any time after the passing of this Act fall