

Saturday, July 7.

FIRST DIVISION.

[Lord Salvesen, Ordinary.
ADDIE'S TRUSTEES v. CALEDONIAN
RAILWAY COMPANY.

*Railway—Bridge—Undertaking to Build a
Bridge—Approaches.*

A railway company by agreement acquired land for an intended branch railway and undertook to construct at their own expense an accommodation bridge over the branch railway, "plans and sections of the bridge . . . and of the approaches to the said bridge" to be submitted to the proprietors' engineers before the construction was commenced. The railway company maintained that they were not bound to construct the approaches to the bridge.

Held that in the absence of excluding words an obligation to construct a bridge included the obligation to construct its approaches.

On 26th January 1905 Miss Janet Addie, Braidhirst, Motherwell, and others, the testamentary trustees of the late Alexander Addie of Braidhirst and Milton, in the county of Lanark, brought an action against the Caledonian Railway Company to have the company ordained to implement an obligation undertaken by it under a disposition granted by the pursuers in its favour, dated 9th and recorded 10th November 1900, of certain pieces of land in the parish of Dalziel, Lanarkshire, which obligation was in the following terms:—"But these presents are granted and the said three pieces of ground and others above disposed are so disposed always with and under the burdens, conditions, declarations, obligations, reservations, and others following, namely—(1) the said company shall construct and maintain in all time coming, at their own expense, one accommodation bridge over or under the branch railway intended to be formed by the said company on the said portions of land above disposed, at a point shown on the plan signed as relative hereto, marked A, or at such other point as may be arranged between . . . acting for us, whom failing . . . and the said company's engineer, said accommodation bridge, if over the said intended branch railway, to have a clear width of 40 feet between the parapets, and if under to have a span of not less than 40 feet and a height of not less than 15 feet. Plans and sections of the bridge to be constructed by the said company, and of the approaches to said bridge, shall be submitted to our engineers before the construction thereof is commenced, and if there shall be any difference between us and the said company with reference to design, character, or construction of said bridge, or as to the gradients or inclination of the approaches thereto, or otherwise in relation to said bridge or approaches, the same shall be determined by . . ."

On 6th July 1905 the Lord Ordinary (Low) gave decree, and on 14th March 1906 the First Division adhered and remitted to the Lord Ordinary to proceed. The pursuers thereafter moved the Lord Ordinary (SALVESEN) in the Motion Roll to ordain the defenders to commence building the bridge and its approaches. The defenders, however, maintained that they were not bound to do more than build the bridge, and that the pursuers were bound to make the approaches at their own expense.

On 5th June 1906 the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary . . . decerns and ordains the defenders to commence the construction of the accommodation bridge referred to in the summons, including the approaches thereto . . . , and that within the period of one month from this date, and thereafter to proceed with the same continuously, and complete the same within the space of nine months from the date of commencement. . . ."

Opinion.—The merits of this case have already been disposed of, and the only point which still remains undetermined is whether the defenders are bound to pay the cost of the approaches to the accommodation bridge which they have been held bound forthwith to construct. The defenders maintain that they have satisfied their contractual obligation when they have constructed the bridge itself, and that the pursuers must at their own expense make the approaches.

"The decision of this important question depends, in the first place, on the terms of the obligation on which the action is founded. The leading provision of the clause is that the defenders are to 'construct and maintain in all time coming at their own expense one accommodation bridge over or under the branch railway intended to be formed on the portions of land disposed.' There follows a provision as to the site of the bridge and the width and height of the span. Then occurs a clause which was strongly founded on by the defenders and which is in these terms—'Plans and sections of the bridge to be constructed by the said company and of the approaches to said bridge, shall be submitted to our (that is, the pursuers') engineers before the construction thereof is commenced.' It was argued that here a sharp distinction is drawn between the bridge to be constructed by the company and the approaches to the bridge, which are not said to be constructed by the company. In my opinion this is too critical a construction of the clause. I think the bridge must be held to include its approaches, and that these are only referred to in the quoted clause in order to make it plain that the pursuers shall have an opportunity of submitting the question as to the gradients or inclination of the approaches to arbitration, in the event of their being dissatisfied with the plans submitted by the company. If the company have nothing to do with the erection, it is not easy to understand why their engineer should be at the

trouble of making plans of the approaches.

"The pursuers' interpretation of the clause is further aided by a consideration of the circumstances under which the disposition came to be granted. The defenders wished to construct a branch railway, and for that purpose they needed to acquire land belonging to the pursuers. The construction of the railway could not fail to cause damage by severance, and it was obviously to minimise such damage by affording a connection between the different portions of the pursuers' land that the obligation to construct the accommodation bridge was undertaken. Now it was left in the hands of the Railway Company to decide whether the bridge should be on the level of the land, as it might well be if the railway were constructed in a cutting, or be carried over or under it. The height of the bridge (above a fixed minimum) fell also to be determined by the company. It is therefore obvious that the cost of construction of the approaches might vary indefinitely according to the method that the Railway Company adopted of making their line. I think it could scarcely have been the intention of the pursuers that in this respect they were to be left at the mercy of the defenders when they took them bound to construct the accommodation bridge. Further, I do not think that a bridge can be properly described as an accommodation bridge which does not afford a complete connection between the portions of ground severed by the line. It was conceded that an accommodation bridge which a railway company are compelled to construct under the Railways Clauses Act includes the approaches to it, and I do not doubt that the agreement embodied in the disposition, and which was intended to obviate the Railway Company having recourse to compulsory powers, was not intended to be less effective in safeguarding the landowner's interests.

"There was some discussion as to the time within which the bridge should be constructed, the pursuers pressing for a period of six months, and the defenders asking that it should be extended to twelve. Mr Guthrie satisfied me that six months was on the short side, but I think that the bridge with its approaches might quite well be completed within nine months from the date of commencement."

The Railway Company (leave having been given) reclaimed, and argued—The Lord Ordinary was wrong. His Lordship had disposed of a serious and important question in the Motion Roll, and the matter had not been sufficiently discussed. There was a clear distinction in the clause in question between the bridge and the approaches. The construction of the latter was more important for the company than the construction of the bridge, for it might involve their having to buy the necessary ground. The agreement implied that the company were to build

the bridge and the landowner to make the approaches.—Railway Clauses Act 1845 (8 and 9 Vict. c. 33), sec. 14, was referred to.

Argued for the pursuers (respondents)—The Lord Ordinary was right. An accommodation bridge meant bridge and approaches. That was the meaning of "accommodation bridge" in the Railway Clauses Act 1845, sec. 60. Reference was also made to the following cases—*Rea v. West Riding of York* (1806), 7 East. 588; *Reg. v. Mayor of Lincoln* (1838), 8 A. and E. 65; *Nottingham County Council v. Manchester Railway Company*, August 7, 1894, 71 L.T. 430.

LORD M'LAREN—This is a sequel to a case which came before us on 14th March on the more general question of whether the Railway Company were under obligation to build a bridge for the accommodation of the pursuers and irrespective of the company's intention to construct a railway. I just mention—as it may have a bearing on a question raised about expenses—that according to my recollection of the case, which I understand is confirmed by counsel on both sides, neither party sought on that occasion to raise the question whether an obligation to build a bridge would include an obligation to build the approaches to the bridge. No doubt both parties were perfectly aware that such a question had to be approached, but whether they thought they would settle it by agreement, or whether they thought it would be more conveniently settled at a future stage of the case, we do not know. The point is that neither party sought to raise it at the previous discussion, and the case accordingly went back to the Lord Ordinary.

The case is now before us on the Lord Ordinary's final judgment, and the question is whether in this agreement the obligation which we have already held to be established to construct a bridge includes as an integral part of it, or as a consequence, an obligation to form the approaches to the bridge. The Lord Ordinary has referred to the Railway Clauses Consolidation Act as giving a clue to the meaning of the words "accommodation bridge" or "accommodation works," and for that purpose—I mean as a guide to the interpretation of the language used—I think a reference to the statute is admissible. Now, when your Lordships refer to the Railway Clauses Consolidation Act I think it is quite plain that under the general heading of "accommodation works" which are there provided for, bridges to and from the railway are among the things which the company is bound to make in pursuance of their obligation to give communication to proprietors whose lands are scheduled. That, however, does not carry us very far, for it is possible the parties to this agreement may have intended a different obligation to what the Legislature has imposed on railway companies where they proceed to enter on lands independently of agreement.

Now, the thing which the Railway Company undertook to do was "to construct

and maintain in all time coming at their own expense one accommodation bridge over or under the branch railway intended to be formed," and there is a provision that "plans and sections of the bridge to be constructed by the said company, and of the approaches to the said bridge, shall be submitted to our engineers before the construction thereof is commenced." The words which I have last read prove to my mind that under the obligation to provide an accommodation bridge it was in the contemplation of both parties that this bridge was to include approaches. Because if there were to be no approaches, or if the formation of approaches were to be left to the proprietor himself, then I could see no object in requiring the company to provide for plans of approaches which they were not to construct, and for submitting these to the parties who are in this case to construct them at their own expense or not to construct them at all.

I agree with the Lord Ordinary also in thinking that in the absence of excluding words the obligation to construct a bridge means a completed bridge—not a bridge with piers and girders at a different level from the roadway, or an arch with abutments at a different level from the roadway—and for this good reason, that the motive of the obligation is to give a passage where the continuity of the road is interrupted. Where that interruption of continuity exists, whether caused by a river crossing the road or by a railway (which of course cannot be traversed in safety by passengers), the motive of the construction of a bridge is just the same—to give a passage and to restore the continuity of a road which is interrupted by the river or railway. Now that object would not be obtained unless the necessary approaches were superadded to what in the more restricted sense may be called a bridge. And if one may appeal to the ordinary use of language (though that is always subject to the observation that people do not always understand the same words in the same sense), I think according to the ordinary use of language the word "bridge" would not be limited merely to the arch or girders and their supports, but would include all that was necessary to effect a safe passage from one side to the other of the obstacle to be surmounted. I am therefore of opinion that the Lord Ordinary's interlocutor is right on the merits.

With regard to the question of time, if your Lordships agree with me I should be disposed to give a slight extension of time to the Railway Company on this ground, that the agreement does not specify any time, and therefore the law will imply a reasonable time. Now I do not profess to have such practical knowledge of bridge construction as to know for myself what would be a reasonable time. But when we are dealing with a corporation like the Caledonian Railway Company, though we do not take their arguments for more than they are worth, yet if they assure us that their engineers cannot undertake to complete the bridge

within the time proposed I feel bound to accept that statement, and to give them the necessary extension of time. Of course that would not be very great—I think three months is asked for.

LORD PEARSON—I entirely agree with all your Lordship has said.

LORD JOHNSTON concurred.

The Court pronounced this interlocutor:—

" . . . Vary said interlocutor [of 5th June 1906] by deleting therefrom the words 'and that within the period of one month from this date,' and substituting therefor the words 'and that within the period of three months from the date of this interlocutor of the Inner House': *Quoad ultra* adhere to the said interlocutor and decern."

Counsel for Pursuers and Respondents—M'Clure, K.C.—Spens. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for Defenders and Reclaimers—Guthrie, K.C.—Blackburn. Agents—Hope, Todd, & Kirk, W.S.

Saturday, July 14.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

ABERDEEN CITY PARISH v. CALEDONIAN RAILWAY COMPANY.

Railway—Poor Rates—Deductions from Annual Value—"Repairs, &c."—Deductions to be Calculated as on Whole Railway and not as on Subjects in Parish—Poor Law (Scotland) Act 1845 (8 and 9 Vict. c. 83), secs. 37 and 45—Lands Valuation (Scotland) Act 1854 (17 and 18 Vict. c. 91), sec. 22.

Held that the deductions from the yearly value in the parish, as entered in the valuation roll, for repairs, &c., which a railway company is entitled to under section 37 of the Poor Law (Scotland) Act 1845, are to be calculated "at the same percentage as the repairs, &c., over the whole undertaking bear to its *cumulo* valuation," and do not depend on the character of the railway property, *e.g.*, stations or permanent way, within the parish.

The Poor Law (Scotland) Act 1845 (8 and 9 Vict. c. 83) enacts—section 37—"And be it enacted that in estimating the annual value of lands and heritages the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year, under deduction of the probable annual average cost of the repairs, insurance, and the expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same. . . ."