regard to the mills and manufactories, it is curious enough that they take a power to supply them with water for the first time for other than domestic purposes. Their power is expressly to supply manufactories and mills with water other than for domestic purposes, which is the first intimation of water for any other than domestic purposes.

Then what is really a very important part of the case, and which, as far as it goes to the validity of the contract, I think is a question out of all dispute, is this. In the 8 and 9 Vict. § 107, it is enacted, "that nothing in this act contained shall extend, or be construed to extend, to take away, alter, abridge, or intrude upon any jurisdiction, powers, or authorities possessed by or vested in the provost, bailies, and town council, or of the trustees, for bringing water into, and lighting, cleansing, and watching the said town, or any property, rights or privileges competent to or vested in them or any of them. But this not only without prejudice to, but in full reservation to all parties of the meaning and effect, and of the respective rights and interests constituted by any deed of agreement or contract made and entered into between the company, on the one part, and the town council and the trustees for lighting, cleansing, and watching the said town, and supplying the same with water, on the other part." So that the rights are reserved to all parties, not only meaning in effect, but the rights and interests constituted by that act are expressly reserved. The result, therefore, in my mind, after the most anxious consideration, is certainly, that I am not prepared to advise your Lordships to reverse the interlocutor; but I have felt very great doubt and hesitation in refraining from coming to that conclusion, because I think that the construction which we are bound to put upon the whole of these transactions is against the real spirit and meaning of that contract. I think the contract was clearly open to no objection. I think the trustees had perfect power to make it; and I am clearly of opinion, looking to the acts of parliament, that, in point of law, if any doubt upon the contract itself had existed, the acts made it perfectly clear, and that, therefore, it is a valid and binding contract. I think that the supply of salt water, in the way in which it is supplied, is a surprise upon the parties; and it is only by the strict construction of the law that we are prevented from doing what I think would meet the justice of the case.

But when I look to the whole of the acts of parliament, and to the contract, and to the nature of the dealings, I am compelled to come to the conclusion, that what the trustees have actually undertaken to do, is only to no longer supply the town with water except through their wells, and that what is intended to be done is to furnish no supply of water within the terms and the meaning and the strict construction of the contract, although it may be, and I rather must consider it to be, as an intended evasion of the contract. But it so happens, that the manufacturers having discovered that salt water would answer their purposes, and that they could get that salt water for nothing, if they could obtain leave from the town council and from the trustees to break up the town, the power is vested in that body to allow them to break up the town. It cannot be said to be a supply of water which they had ever made, because they had never supplied salt water, nor did anybody contemplate their doing so. Unfortunately the contract did not look to that case which has since arisen. I think that point in the contract, therefore, was not provided for, although I have anxiously looked to see whether effect could not be given to it; but I cannot come to any other conclusion than that at which my noble and learned friend has arrived, viz., that the decision of the Court below should be affirmed, but that there should be no costs, the case having been argued at your Lordships' bar upon points which were not agitated in the Court below, and which ought not to have been raised in this House.

Interlocutors affirmed.

Appellants' Agents, Patrick, M'Ewen, and Carment, W.S.—*Respondents' Agent*, John Ross, S.S.C.

JUNE 11, 1855.

EBENEZER ADAMSON, Inspector of the Poor, City Parish, Glasgow, and Others, *Appellants*, *v.* THE EDINBURGH AND GLASGOW RAILWAY CO., *Respondents.*

Poor Rates—Owners and occupiers of railways—Stations—Statute—Construction.

HELD (affirming judgment), (1) *That according to the Poor Law Amendment Act*, (8 *and* 9 *Vict.* c. 83,) *a railway company was liable to be assessed for poor rates both in the character of owners and of occupiers.* (2) *That in assessing the railway, the stations at both ends of the line, and also those situated along the line, were not to be assessed separately in the parishes in which they were situated, but were to be valued as forming a part of the whole railway, the assessment to be apportioned according to the length of the line intersecting the respective parishes.*[1]

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[1] See previous reports 15 D. 537; 25 Sc. Jur. 383. S. C. 2 Macq. Ap. 331: 27 Sc. Jur. 428.

Adamson and others appealed, maintaining in their case, that,—On a sound construction of the Poor Law Amendment Act, (8 and 9 Vict. c. 83,) the *termini* or stations of the railway, and other stations and buildings on the line, were proper subjects of assessment for the poor, distinct from the proper railway, which was a separate subject of assessment, and common to all the parishes through which it passed. Accordingly, the respondents ought to be assessed upon the terminus or station within the City of Glasgow Parish, over and above the assessment in which they were liable in respect of that portion of the line lying within the parish.

The respondents maintained, that—1. According to a sound construction of the act, the railway, considered as a subject of valuation, was to be held to comprehend the stations; and the value of the stations was to be included in the value of the railway, to be divided as under the 45th section amongst the parishes, according to a mileage apportionment. 2. In consequence, there could be no other or separate assessment of the stations in the different parishes.

Rolt Q.C., and *Anderson* Q.C., for the appellants.—The chief question turns on what is the meaning of the word "railway," as used in the 45th section of the Poor Law Act. The word is no doubt equivocal, for it may mean the mere line of rails, *i. e.*, mere length without breadth; or it may mean that, together with all the stations and buildings connected with it. We contend it means mere length without the stations. In the first place, it is clear that the stations and buildings therewith connected are lands and heritages, within the meaning of the 34th section, and are *primâ facie* liable to be rated in the parish where they are situated. It requires clear words of some statute to take them out of that liability. The only word alleged to do so is the word "railway," used in the 45th section. But that word is not sufficient, for, in the only other section in which it is used, viz., § 1, it clearly designates the mere length of the line, exclusive of the stations. So it is used in the same sense in the Railways Clauses Act. The policy of the act also points out that as the meaning in the 45th section, for the object of the act was to remedy the difficulty complained of when it was attempted to put a specific value upon any given portion of the line as distinguished from other portions. But though the mileage principle was adopted as regarded the line itself, the stations do not fall to be included in that value, as was settled in *Anderson* v. *Union Canal Co.*, 9 D. 402. So it is held in England, that the stations are no part of the line when assessed on the mileage principle.—*R.* v. *Great Western Railway Co.*, 4 Rail. Cas. 28; *R.* v. *Grand Junction Railway Co.*, *Ibid.* 1; *R.* v. *Brighton Railway Co.*, 6 Rail. Cas. 440. This is also clear from the justice of the case, for before the railway was made, the ground occupied by its stations yielded a large assessment to the parish, and why should the parish be deprived of this source of its funds? Besides, the stations often include hotels and other buildings, which have no necessary connection with the main purpose of a railway, which is its use as a highway. The stations themselves are merely used as incidental to the trade of carriers, which is carried on by the company. They may or may not superadd the business of carrying; but if they do, that is no reason why the stations should cease to be assessed in their proper parishes. Suppose the company too poor to buy stations of its own, and merely to rent them, it could not be said in that case that the owner of the stations would not be assessed in his separate parish. It was not essential to the purpose of a railway that large stations should be erected, and therefore there was nothing to shew here that their value ought to be added to that of the line itself, and assessed in common among all the parishes.

Lord Advocate (Moncreiff), and *Solicitor-General* (Bethell), for the respondents.—The chief argument of the other side is, that it is unfair to deprive the parishes at the terminus of the railway of the separate assessment, but that question is one for the legislature, and not for the Court. Nor is there any ground of complaint that the word "station" has been held by the Court below to include miscellaneous buildings, for all that the Court has decided is, that stations are included in the value of the railway; but it is not defined how much or how little is comprehended in the term "station." The test of the case is, whether a railway could be let to a tenant without its stations? It is self-evident, that no tenant would give any rent for a railway without the use of the stations.

[LORD BROUGHAM.—Suppose the railway company to have a large hotel, or large coal warehouses, or a set of shops at the terminus, you would not hold these as part of the station?]

[LORD CHANCELLOR.—The only safe view seems to be, that all that is *bonâ fide* meant to be auxiliary to the main purpose of the railway is to be included, but not such buildings as are merely incidental to the use of the railway.]

We do not contend for so liberal an interpretation of the word "station" as to include hotels, but we say it is not necessary in this case to give any legal definition to the word at all, for the interlocutor leaves that open. The word "railway" in the 45th section means the aggregate thing, consisting of the line of rails and the stations. The word is always used in this composite sense in acts of parliament, and it is the popular sense also. The case of *Anderson* v. *Union Canal* does not apply, as it was decided before the Poor Law Act was in operation. So the English cases cited proceed on a mere principle of expediency, while here everything turns on the terms of the statute.

Rolt replied.—The word "railway" is, no doubt, capable of two meanings, but it is not true

that it is always used in acts of parliament in the composite sense. Thus, even in the interpretation clause of the Poor Law Act, it plainly means something exclusive of stations. So in § 34 of the same act, and also in the Railways Clauses Act.

[LORD CHANCELLOR.—Then how much of the line would you include in the term "railway"?]

Merely the space on each side of the rails—all that is necessary for the mere purpose of locomotion.

[LORD CHANCELLOR.—Suppose there were no stations, but merely water tanks, would you include these?]

Yes; because they would be necessary to locomotion. So, perhaps, we may include a space for a landing place, but large buildings are quite unnecessary. At all events, if the House should be of opinion that stations are properly included in the term "railway," then we ask the House to define the term "station," so that it may be known what buildings come within that description, for it is plain there must be some limit.

LORD CHANCELLOR CRANWORTH.—My Lords, this is an appeal to your Lordships from a decision of the Court of Session, by which they have sanctioned a particular mode of rating a railway. Several questions were raised in the Court below, but the only question raised upon this appeal is—whether the Court have come to a right conclusion in finding "that, in assessing the railway, the stations at each end thereof, and along the line, are not to be assessed separately, but are to be valued as forming a part of the railway, the value whereof is to be apportioned under the 45th section of the Poor Law Act"? The 45th section says this:—"That in cases where any canal or railway shall pass through or be situate in more than one parish or combination, the proportion of the annual value thereof on which such assessment shall be made for each such parish or combination, shall be according to the number of miles or distance which such canal or railway passes through, or is situate in, each parish or combination, in proportion to the whole length."

Now we are not at all called upon to give an opinion as to whether or not that is a mode of assessing which is well calculated in ordinary cases to do justice. Probably that matter must have been very well considered at the time of the passing of the act, and although it is open to the observation that it may work injustice in particular instances, I suppose that, looking at the nature of the case, and to the difficulties which had occurred in this country, of which the two cases that have been cited are a very good illustration, the legislature thought that it was one of those cases in which it was absolutely necessary to cut the knot, and to do, if not absolute justice, yet that which should be as near an approach to justice as the circumstances of the case would admit of. And the legislature having made that enactment, it now remains for your Lordships, as the ultimate Court of Appeal, to put a construction upon it, and to say what was really intended.

Now it appears, that assessments to be made in Scotland are to be made in a variety of different modes, according as the parishes or districts shall select one mode or the other. But in this particular case they were to be made by assessing the owners and occupiers half and half. Each was to pay half, and in order to ascertain what that amount was to be, § 37 says, that, in assessing the annual value of the lands and heritages, which was to govern the amount of the assessment, both as to the owner and occupier, "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 annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges."

Now, recollecting that, let us carry that with us to the construction of the 45th section, which I have just read. First of all, before you can ascertain the proportion, you must ascertain what the whole is; that is quite certain. Therefore, what you have to do in the first instance, is to assess the value of the railway, and then we come to the question—what is the meaning of "railway" in that clause?

Now I quite admit the argument of Mr. Rolt, and there is great force in it, that the expression "railway" is perhaps an equivocal term. It may mean merely the way with the rails, or the way, with the rails and a little necessary siding on each side. It may mean that, or it may have that which is the more common meaning in popular parlance when you speak of a railway. If, for instance, you speak of the Great Western Railway, or the Great Northern Railway, you mean the whole concern. It may mean either the one or the other; the question is—what does it mean here? In what sense has the legislature used the expression "railway or canal"? Now, when I come to consider that the legislature is contemplating something which is to be looked at with a view to see at what annual sum it would let for from year to year, I cannot but come to the conclusion, that it means something which might be so let, that the tenant taking it might make a profit to himself. If you take literally the railway only, the lines of rails without anything else, it would let for nothing at all, for the tenant would have no power of getting on or off, unless according to the old principle, by which it was said that when you let something in the middle of your property you always necessarily let a right of way to get to it; but that, of course, could

not be what was contemplated. Then the "railway" must mean something more than the actual lines of rails. What more? I can come to no more reasonable conclusion than that it must mean that in addition, which is necessary for the using of those lines of rails.

But it is said, and so Mr. Rolt has just argued, that it does not necessarily include the stations at each end of the line. I am at issue with him upon that. If the meaning is to be taken to be only what is absolutely necessary for the railway itself, you might, to be sure, have a railway, and people might come to it in the open air, and use it in that way, without any place for shelter either for themselves or for their luggage. No doubt we all remember the reasoning employed to shew, that all beyond the supply of the bare necessities of the merest beggar is superfluous. Therefore, when we speak of anything being necessary for a railway, we mean by necessity, that it will always be found connected with it. This is very well illustrated by what takes place in the Courts of Common Law, in actions against infants for having supplied them with necessaries. I remember a case of a gold shirt pin being supplied to a nobleman's son, which was held to come under the head of necessaries. How did the Court reason upon that subject? It is necessary for a young nobleman to have clothes, and, according to the rule of law, under the head of necessaries would come such clothes as persons in his situation ordinarily wear. You could hardly say that two or three coats in a year were necessary. Certainly, you might get on with one coat in a year, or with one coat in two years, though it might be very ragged and shabby. But there can be no doubt, that such a number of coats or of other matters of apparel, as are ordinarily used by persons in that particular situation of life, would come under the name of necessaries.

Applying that doctrine here, I think that, even if there were no legislative authority for the construction that I put upon this word "railway," namely, as including the stations, it would be very reasonable to say, that a station giving more or less of accommodation, according as the railway is of more or less importance, does fairly come under that head, as being necessary for the occupation and convenient use of the railway.

I think, however, we are not driven to mere speculation on this subject. The Scotch Poor Law Act passed in August 1845. In the previous May had passed the Statute 8 and 9 Vict. c. 20, for consolidating into one act certain provisions usually inserted in acts authorizing the making of railways, and I find that in that act, in the interpretation clause, it is said the expression "the railway," shall mean "the railway and works by the special act authorized to be constructed." Then, what are the works which are authorized to be constructed? The 16th section says, "subject to the provisions and restrictions in this and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, herein after mentioned, to execute any of the following works, (that is to say,) they may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniencies, as they may think proper."

Now that is a legislative exposition, that it is no unreasonable construction of the word "railway" to suppose that it includes stations which are constructed for the accommodation of the persons using it; and I further find in the same act of parliament, in the 112th section, that "where the company shall be authorized by the special act to lease the railway," certain things are to follow. The railway there clearly means the railway and the works connected with it. That, again, is a great help in considering what is meant by the annual value of the railway, because, applying the construction of this act, which is not necessarily to be applied, but may very reasonably be applied to the act which passed a few months afterwards, we find that the word "railway" included all the works erected by the company for the accommodation of the persons using it.

It appears to me, therefore, that, taking a very common sense view of the case, inasmuch as the Poor Law Amendment Act, with reference to the assessment, was to be construed by those who had every day to bring it into use, there ought to be no refined reasoning upon what may be abstractedly the right meaning of the "railway;" but what we are to look at is the way in which it is popularly used, and not only popularly used, but used by the legislature in abundance of other acts, in which we find that the word is so used as to include that which is absolutely necessary or so convenient as to be fairly brought within the meaning of the words "necessary for the convenient use of the railway." That includes the stations erected at each end and along the line.

But then Mr. Rolt says, that your Lordships ought not to adopt this interlocutor without laying down some rule, or giving some definition of what you include in the word "station." I think that would be extremely dangerous, because what would be included would probably be different in the case of each railway. To take the illustration I alluded to before, a very different sort of station may fairly come within the definition of the word "station" at the Great Western Railway, or at the Great Northern Railway, from what would be adapted to the case of a minor railway. It would be a much more expensive erection in the one case than in the other. There is no doubt that the word "station" ought not to be extended to include anything more, and I

see nothing in the interlocutor which ought to lead to the inference that it was intended to include anything more than what is necessary for the convenient use of the railway as a railway. The word "station" is a perfectly well understood term, and any definition would be open to the observation that it was *clarum obscura involvens*. Everybody knows what the word "station" means—that it is a place to which every person using the railway may come on foot or in carriages, and bring their luggage, and it probably has connected with it a room where persons may wait, if it is a railway for taking various descriptions of passengers—first, second, and third class passengers—and all that description of accommodation, without which a railway cannot be conveniently used. It certainly will not include a hotel and other matters not necessary for the occupation and convenient use of the railway. I think it may properly include a directors' room. It is exceedingly important, that there should be at a station a directors' room, to which persons having complaints to make may resort for that purpose. I do not think there can be any practical difficulty upon the subject. I think that that which Mr. Rolt invited your Lordships to do, namely, to insert some definition, would be infinitely more likely to give rise to litigation than to lead to any good result.

With respect to the cases that were relied upon, they were English cases, and have no application to this case, because what the respondent rests upon is the construction of this Scotch Poor Law Act. But there was no such act in England; and the assessment having been made upon the land which was occupied by the railway in the particular parishes upon the best principle that the parties could arrive at, and they having done it very elaborately, and perhaps very reasonably, (if you please, more reasonably under the Scotch Poor Law Act,) the Court of Queen's Bench thought it a very reasonable mode, and refused to interfere with the rate. That is wholly inapplicable to this case, which rests, not upon any abstract discussion as to what would be the more expedient or the more just or reasonable way of assessing a portion of a railway which passes through a particular parish, but upon the construction of this special act of parliament. I therefore move that this interlocutor be affirmed, with costs.

LORD BROUGHAM.—My Lords, I take entirely the same view of this case, both as to the result and as to the argument of my noble and learned friend. I have taken most anxious care, from the beginning of this case, that every part of the argument urged in the Court below and at your Lordships' bar should receive, as far as I was able to give it, my fullest attention, and most deliberate consideration; and if I do not repeat any of the arguments, it is because I feel it to be superfluous to go over the same ground again, which has been so ably and distinctly gone over already.

I have at different times had doubts whether or not we ought to attempt to lay down some definition of the word "station," so as to preclude the necessity of further litigation, ending, in all probability, in a further appeal to your Lordships' House; but, on further consideration, I think that it would be not only difficult for us to make any satisfactory definition, but impossible, for I can hardly imagine our making any definition which would not be sure to lead to other questions, not now raised by the law, as it stands at present. Some reference has been made to the 37th and 42d sections of the Poor Law Act, and to the Railways Clauses Act, all of which provisions call to my mind very many cases before Courts of Justice, illustrating the faulty manner in which acts of parliament are drawn, and I heartily wish I could see a better system laid down and pursued for more accurately framing them.

Interlocutors affirmed, with costs.

Appellants' Agent, James Burness, S.S.C.—*Respondents' Agents*, Smith and Kinnear, W.S.

JUNE 14, 1855.

ROBERT GRAHAM, *Appellant*, *v.* ROBERT STEWART and PATRICK MURRAY THREIPLAND (Lord Lynedoch's Trustees), *Respondents*.

Trust Deed—Direction to make a Valid Entail—Extrinsic Evidence—Powers and Duties of Trustees—*In terms of the trust settlement of a proprietor of an estate held under an entail, dated in* 1726, *his trustees were directed to invest the residue of his means in the purchase of land, and to convey it to the same series of heirs, and under all the conditions and clauses contained in the entail of* 1726, *in "so far as the same may be applicable, and so as to form a valid and effectual entail, according to the law of Scotland." After the death of the truster, it was judicially decided, that the fetters of the entail of* 1726 *were ineffectual to prevent sales, and so fell under the operation of the Entail Amendment Act of* 1848; *and the estate was thereafter sold.*