FEBRUARY 10, 1860.

THE GLASGOW, BARRHEAD, AND NEILSTON DIRECT RAILWAY COMPANY, *Appellants, v.* THE CALEDONIAN RAILWAY COMPANY, ROBERT OLIVER, Collector of Poor's Assessment for the Abbey Parish of Paisley, and ROBERT ROBERTSON, Inspector of that Parish, *Respondents.*

Poor's Assessment—Railway—Long Lease—Owner—Statutes 8 and 9 Vict. c. 83; 9 and 10 Vict. caps. 142 and 201, &c. *The Barrhead and Neilston Direct Railway was, by act of parliament, leased to the Caledonian Company for* 999 *years, on payment of a certain dividend out of the C. Company's funds to the B. shareholders.*

HELD (reversing judgment), *on a construction of the* 8 *and* 9 *Vict. c.* 83, *that the Caledonian Railway Co. were the "owners" of the line, and as such were bound to pay poor's assessment, as they did not stand substantially in the relation of tenants towards the other company, and paying a rent to them as the landlords.*[1]

The pursuers appealed, maintaining in their *printed case* that the judgment of the Court of Session should be reversed—1. Because the Caledonian Railway Company,—being vested with the rights originally vested in, or competent to, the appellants, the Glasgow, Barrhead, and Neilston Direct Railway Company, in virtue of the acts authorizing the appellants to construct and hold the said line of railway,—were liable directly to be assessed for the poor's rates payable to the Abbey Parish of Paisley, in respect of the ownership of the said line of railway. 2. Because, in the event of the respondents not being directly so liable, they were bound to relieve the appellants, as owners of the railway, of all liability for, and to repay all sums paid, or which might be hereafter paid by the appellants, on account of poor's rates to the Abbey Parish of Paisley.

The *respondents* maintained in their *printed case* that the judgment was correct for the following reasons:—1. The appellants are owners of the Glasgow, Barrhead, and Neilston Direct Railway, in respect that the title of property is vested in them, and that they have never been denuded. 2. The appellants were not divested of their rights as "owners" by the Act of 1849, passed "to effectuate a lease of the Glasgow, Barrhead, and Neilston Direct Railway to the Caledonian Railway Company," or by the lease granted in pursuance thereof, or in any other way. 3. The terms of the Leasing Statute of 1849, and of the lease granted in pursuance of it, were such as to distinguish the right of tenancy from the right of ownership, and to preserve to the appellants their inherent right of property. 4. The appellants must be held as the "owners" of the subjects, and liable for the owners' share of the poor's rate, because the appellants were "owners" in the sense of the Poor Law Amendment Act of 1845. 5. There was nothing in any of the Statutes applicable to the appellants or the respondents, or in the contracts and agreements between them, which could shift their liability for poor's rates, or throw upon the respondents the payment of a tax which naturally, justly, and under the express terms of the Taxing Statute, fell upon the appellants.

Rolt Q.C., and *R. Palmer* Q.C., for the appellants, contended that the true construction of all the provisions of the Statutes was, that the Caledonian Company were substantially the "owners" within the meaning of the Poor Law Act, and the payments made by the Caledonian Company were not in the nature of rent.

The *Attorney-General* (Bethell), and *Lord Advocate* (Moncreiff), for the respondents.

Cur. adv. vult.

LORD CHANCELLOR CAMPBELL.—My Lords, in this case we are to determine whether the Barrhead Railway Co. or the Caledonian Railway Co. be liable to be assessed for the relief of the poor of the Abbey Parish of Paisley, in respect of so much of the Barrhead line as passes through that parish for the half of the assessment to be imposed on the owners of lands and heritages within the parish, under Statute 8 and 9 Vict. cap. 83, § 34. And this will depend upon which of the two companies ought to be considered owners of this line according to the definition of the word "owner" in the first section of that Statute.

Our answer, I think, ought to be governed by an examination of the nature and effect of a

[1] See previous reports 17 D. 1148; 27 Sc. Jur. 588. S.C. 32 Sc. Jur. 292.

transaction between the two companies after they were incorporated, making over the Barrhead line to the Caledonian Co. for a period of 999 years. The true nature and effect of this transaction is involved in some obscurity; but after a deliberate review of the documents to be construed, and the able arguments addressed to us on both sides, I agree with Lord Wood, the dissentient Judge in the Court below, and come to the conclusion that the decision of the Second Division of the Court of Session upon this question ought to be reversed.

From the acts of the parties, and the whole scope of the language they have employed, we are to discover what was their real intention. That intention seems to me substantially to have been that the Barrhead Co. should alienate and permanently transfer their line to the Caledonian Co., in consideration of certain periodical payments to be made by them to the shareholders of the Barrhead Co., which were to be received without being liable to any deduction in respect of the management, occupation, or ownership of the line. This was to be carried into effect under the guise of a lease of such length as should be equivalent to a perpetuity. Accordingly, in September 1845, they entered into an executory agreement to accomplish this object; and in August 1849 they obtained an act of parliament authorizing them to act upon this agreement.

Sect. 3 of this act enacts, that "immediately after the passing of the act, or as soon after as conveniently can be, the Barrhead Co. shall execute and deliver, in favour of the Caledonian Co., a deed or lease, in accordance with the provisions of this act, for the term of 999 years, from the 27th day of September 1849, of all the railways, works, lands, tenements, and hereditaments, and an absolute assignment of all the engines, carriages, waggons, goods, debts, chattels, monies, and other property whatsoever then belonging and owing to the Barrhead Railway Co., or acquired or constructed by means of the funds and for the behoof of the said last named company, or of the Glasgow Southern Terminal Railway Co., together with the revenue arising from the said railways and other property, from and after the said 27th day of September 1849, in consideration of the payment of the rent or dividends, and of the other conditions and provisions hereinafter mentioned, and which lease and assignment the Caledonian Railway Co. shall forthwith accept and take; and upon the execution of the said deeds of lease and assignment, the said railway's works, lands, tenements, and hereditaments, engines, carriages, waggons, goods, debts, chattels, monies, and other property and effects whatsoever, and the revenue arising therefrom, from and after the said 27th day of September 1849, and save as hereinafter excepted, all the rights, privileges, powers, and authorities given to or vested in the Barrhead Railway Co., by or under the powers of the said recited acts, or any of them, or any other act or acts, or any deeds granted in pursuance of any such acts, shall, subject to the existing debts, liabilities, engagements, contracts, obligations, and incumbrances affecting the same, and subject also to the provisions of this act, and of such lease, be transferred to and vested in the Caledonian Railway Co., and may be lawfully held, used, exercised, enforced, and enjoyed by and in the name of the said last mentioned company, in the same manner and to the same extent as if the undertakings authorized to be made and maintained by such acts had been originally authorized to be made and maintained by the said company, or as if their name had been inserted in such acts, or in the deeds executed in pursuance thereof, as aforesaid, in lieu of the name of the Barrhead Railway Co."

The act contains no exception which would prevent the intention of the parties, as I have described it, from being carried into effect. The Barrhead Railway Co. is to remain a corporation, but only for purposes quite consistent with the Caledonian Railway Co. acting as the exclusive owners of the Barrhead line. By §§ 7 and 8 every proprietor of one or more shares in the Barrhead Railway Co., who had paid £25 a share, was to be entitled to, and to receive, a dividend out of the general funds or profits of the Caledonian Railway Co. at the rate of six per cent. per annum. And a similar provision was made for allowing five per cent. to another class of Barrhead shareholders; and these dividends were to be paid by the Caledonian Railway Co. half yearly to the treasurer of the Barrhead Railway Co., who was to distribute them among the Barrhead shareholders. And a further contingent payment was to be made to one set of these shareholders. By § 12 it is enacted, "that all debts and monies which, immediately before the execution and delivery of the deeds hereinbefore mentioned, were due and owing by or recoverable from the said Barrhead Railway Co., or for the payment of which they were, or but for the passing of this act would have been, liable, shall (during the continuance of the said lease) be paid with all interest, if any, due, or to accrue due thereon by and be recoverable from the Caledonian Railway Co., and all conveyances, leases, covenants, contracts, agreements, mortgages, bonds, and securities made or entered into before the execution and delivery as aforesaid of the said deeds to, with, in favour of, or by or for the said Barrhead Railway Co., or any person on their behalf, shall (during the continuance of the said lease) be, and remain as good, valid, and effectual in favour of, against, and with reference to the Caledonian Railway Co., and may be proceeded on and enforced by or against the said company in the same manner, to all intents and purposes, as if the said company had been a party to and executed the same, or had been named or referred to therein, or as if the same had been granted or entered into for behoof of the said company instead of the said Barrhead Railway Co."

The 14th and other sections contain other provisions, which I think clearly indicate, that the ownership of the Barrhead line, and the powers and liabilities of the Barrhead Railway Co., were to be transferred to the Caledonian Railway Co., and enjoyed by them for 999 years.

In 1851, what is called the "Arrangement Act" was passed, but I do not think that any of its provisions alter the relation as to the Barrhead line of railway established between the two companies by the former act.

The respondents' counsel contended, that this was merely the relation of landlord and tenant; and they say truly, that the feudal title remained in the Barrhead Railway Co. But § 1 of 8 and 9 Vict. cap. 83, declares, that "'owner' shall apply to liferenters as well as fiars, and to tutors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in actual receipt of the rents and profits of lands and heritages." From the execution of the deed called a "lease," the Caledonian Co. were put in all respects in the situation of the Barrhead Co. as to the Barrhead line; and there was a continuity of ownership established between them. It was only to last a thousand years less one, but during this period it was to be identical with that of the Barrhead Co. The counsel for the respondents argued that the question must be decided in the same way as if the lease had been for seven years, reserving a rent payable quarterly to the lessors. But in their case laid before your Lordships on this appeal, (I read the words of the case,) "The respondents are very far indeed from maintaining that the extraordinary duration of a lease may not be an element, and a very important element, in determining, in an equitable point of view, who has the substantial interest in the subject." Nor do they take any distinction between a demise for 999 years and a demise for a million of years, or any longer period. They rely upon there being a substantial payment to be made in respect of the enjoyment. But although there be a stipulation for such a payment, if there be no contemplation of the owner who makes the grant, or of any persons representing him, ever at any time, or in any contingency, resuming possession, is not the granter, who is to enjoy and manage the property for his own profit, to be considered the owner as much as if the grant were to him "as long as grass grows or water runs!" The payment to be made is a mere charge upon the property; and the amount of the charge, whether a peppercorn or ten thousand pounds a year, makes no difference as to the ownership of the property.

The word "lease" is used, and the word "rent" is used, although the payment is sometimes called a fixed dividend; but *totâ re perspectâ*, we must consider in what sense the words are used by the parties, and what operation was meant to be given to them. Now, I think that instead of this deed operating as a lease, the intention of the parties was to convey the line to the Caledonian Railway Company, and that the Caledonian Company should have all the rights and should be subject to all the liabilities of owners. The common law of Scotland knows no such estate or interest as that which was to vest in the Caledonian Railway Company; and, on the other hand, the payments to be made for the benefit of the shareholders in the Barrhead Company, have by no means the legal incidents of rent. But the legislature sanctioned an arrangement between the two companies, by which, in consideration of certain periodical payments, the ownership of the Barrhead line was transferred to the Caledonian Company for 999 years.

I am therefore of opinion, that the question of recouping does not arise. If, by a valid arrangement between the two companies, the Caledonian Company had become, in point of law, the owners of the line, the parish has a right to assess them directly as owners as well as occupiers.

I would only further observe, that although the Barrhead Company, after the passing of the 12 and 13 Vict. c. 90, and the execution of the lease was not entirely disincorporated, and it still had functionaries to superintend the receipt and distribution of the dividends to be received from the Caledonian Railway Company, it can hardly be considered to have preserved machinery through which it could be assessed to the poor, or raise funds for the payment of such an assessment. Its situation was, I think, not inaptly compared at the bar to that of the East India Company, after the ownership of the dominions which that great corporation once ruled was transferred to the Crown, retaining the power to superintend the payment of dividends to the holders of East India stock, but no longer capable of collecting a territorial revenue, or making peace or war with the Princes of Hindostan.

For these reasons, I am of opinion that the interlocutor of the 20th July 1855, in as far as it finds that "the Barrhead Company remained the owners of the railway leased by them to the Caledonian Company, and liable to be assessed as owners," ought to be reversed.

If this should be your Lordships' opinion, there will be no difficulty in framing the judgment to be pronounced on the rest of that interlocutor, and on the other interlocutors appealed against.

LORD BROUGHAM.—My Lords, I come to the same conclusion with my noble and learned friend. He has noticed in his reasons the opinion of Lord Wood, in which I concur. I particularly concur in that part of his opinion as to the effect of the transference from the one company to the other in the form in which it was made.

LORD CRANWORTH.—In this case, my Lords, the question is, whether the appellants are "owners" of the Barrhead Railway within the true intent and meaning of the Scotch Poor Law Act, the 8th and 9th Vict. cap. 83, § 1. The argument of the respondents is, that the appellants have the feudal title in the railway, subject only to a lease for 999 years in the respondents; and that, by virtue of this feudal title, they are entitled as landlords to an annual rent of £11,437 10*s.*, payable by the respondents during the term, and so are liable to be rated as owners of a railway yielding an annual rent of £11,437 10*s.*

The appellants certainly have the feudal title, subject to the term; and if, therefore, the annuity secured to them by the 16th and 17th Vict. cap. 149, § 18, amounting to £11,437 10*s.*, is to be regarded as rent payable by the Caledonian Company as tenants of the Barrhead line, then the appellants would be owners within the true meaning of the Poor Law Act. They would be persons in the actual possession of the rent of lands and heritages to the amount of £11,437 10*s.* per annum.

But I do not think that this annuity can be treated as rent of the line. The word "rent" only occurs twice in the Leasing Act, and then only in connexion with the word "dividends." In the third section the act, after reciting that the Barrhead Company had agreed to lease their line to the Caledonian Company in consideration of the payment of the "rent or fixed dividend" therein mentioned, (which I interpret to mean "rent, otherwise fixed dividends,") proceeds to enact, that "the Barrhead Company shall execute and deliver to the Caledonian Company a deed of lease for 999 years of all the railways, works, lands, tenements, and hereditaments, and an absolute assignment of all the engines, carriages, waggons, goods, debts, chattels, monies, and other property and effects whatsoever then belonging to the Barrhead Company or acquired by means of the funds, and for the behoof, of the said last named company, or of the Glasgow Southern Terminal Company, together with the revenue arising from the said railways and other property from and after the said 27th day of September 1849, in consideration of the payment of the 'rent or dividends,' and of the other conditions and provisions hereinafter mentioned."

These are the only instances of the use of the word "rent" in the act. In all the clauses directing the payment, the sum to be paid is called a dividend or dividends. Thus in the 6th section a dividend of six per cent. is made payable to the original shareholders on the amount of their shares, and by the 7th section a dividend of five per cent. is made payable to the new shareholders. These dividends are by § 8 to be paid to the treasurer of the Barrhead Company, and to be by him divided among the shareholders; and I therefore think they may not unreasonably be considered as payable to the Barrhead Company. Payment to the treasurer of the company is in truth payment to the company. These dividends, it must be observed, are made payable out of the general funds or profits of the Caledonian Railway Company—not out of the demised railway, except so far as that railway would by the demise have become part of the Caledonian Company. The circumstance strongly tends to shew, that the sum payable was not deemed by the legislature to be rent, which is generally considered as issuing out of the thing demised.

The 9th section provides, that if in any year the net profits of the Barrhead line shall be more than sufficient to pay the said dividends of six per cent. and five per cent., then the holders of the original shares in that line shall be entitled to receive one half of the surplus profits in addition to their six per cent.: and provisions are contained in the act for the purpose of enabling the persons interested to ascertain whether such surplus profits have in fact been made.

By section 11 a lien on the Barrhead line is given to the shareholders to secure to them the payment of their aforesaid dividends.

There are many other references in the act to the payments to be made by the Caledonian Company, in all of which they are described as payments of dividends, not rents.

If the matter had rested on this act alone, without placing much reliance on the mere word "rent" being dropped, I should have been strongly inclined to think, that, although the railway was to be parted with, not by an absolute conveyance, but by a demise for 999 years, there was no intention to treat this as rent. The meaning, as collected from all the clauses, would have seemed to me to be, that for 999 years the Caledonian Company were to be owners of the Barrhead line, *i.e.*, in the language of the Poor Law Act, the persons in receipt of the rents and profits, subject only to the statutory obligations imposed on them of making certain payments to the Barrhead shareholders. The case, however, does not rest on this act alone. A subsequent act was passed two years afterwards which throws great light on that which had preceded it. I refer to the Arrangement Act of 1857, the 14th and 15th Victoria, c. 134. That act, after reciting the act by which the Caledonian Company was formed, goes on in its preamble to recite, that by four different acts four branch railways, all particularly mentioned, had been purchased by, transferred to, and amalgamated with, the Caledonian Company, and that, in consideration of such transfers, the shareholders in the companies whose lines are so transferred, were to receive, one of them a perpetual annuity equal to eight per cent. on the capital stock transferred, and the others fixed dividends on their shares, at various specified rates, to be paid to their respective

shareholders by the Caledonian Company. The preamble then goes on to recite the Barrhead Leasing Act, and that the original shareholders of the Barrhead Company were entitled to dividends of six per cent., with contingent increase on their original shares, and that the new shareholders were entitled to a fixed dividend of five per cent. on their shares, all payable out of the general funds or profits of the Caledonian Company. The preamble then proceeds thus :— "And whereas the said annuity and the said several guaranteed dividends hereinbefore mentioned became, and were, and now are, payable by the said Caledonian Railway Company to the parties respectively entitled thereto, under and by virtue of the said five last recited acts respectively; and provision was also made in the said several acts for securing to the parties entitled to such annuity and guaranteed dividends respectively as aforesaid, a lien for the amount thereof over the several railways respectively by those acts transferred, or authorized to be transferred, to the Caledonian Railway Company, and upon the whole revenues thereof, subject" to certain prior rights which are there mentioned.

Then, afterwards, there is the recital, "And whereas the annual sum payable by the company in perpetuity, in respect of the said annuity and guaranteed dividends, amounts to £108,708 8*s.* 4*d.*"

Now, pausing here for a moment, I must observe that the annuity and dividends secured to the four companies, which were transferred absolutely to the Caledonian Company without any feudal title reserved to the branch line, and the dividends payable to the Barrhead Company, are all classed together as constituting one gross sum. No distinction is made as to a part being payable as rent, and the rest merely as a stipulated fixed money payment. And this seems to indicate, though not conclusively, that the nature of all the payments was considered by the legislature to have been the same. They are all treated as making up one annual sum payable by the Caledonian Company in perpetuity, and the Barrhead line is referred to as a line authorized to be transferred, not demised, to the Caledonian Company. The inference seems to me very cogent, that the legal obligation of the Caledonian Company, in regard to the several lines vested in them, was, in every case, the same, that if they were owners, as they certainly were, of the four lines of railway absolutely transferred to them, so they were also owners of that which was only leased to them for 999 years; except, indeed, that at the end of that term, if we are seriously to speak of rights arising at the end of such term, their right as owners would revert to the Barrhead Company. In the meantime, that line is recited to have been authorized to be transferred, and the lease actually executed is, by necessary implication, recited as a transfer, and the sums payable to its shareholders are referred to as guaranteed dividends, part of an annual sum payable in *perpetuity* by the Caledonian Company—these dividends, it must be observed, being sums not issuing out of the Barrhead line exclusively, but out of the whole of the funds of the Caledonian Company.

By various sections of the act the dividends, thus payable to all the five companies, are commuted for certain fixed annuities—that payable to the Barrhead Company being, by § 26, commuted for an annuity of £11,250, afterwards, by a subsequent act, altered to £11,437 10*s.*

The 32d section provides, that these fixed annuities, when received, shall be divided by the directors of each company among their shareholders, as the guaranteed dividends, for which they are substituted, would have been divisible.

From all these clauses it is to be inferred, that whatever was the quality of the dividends before the passing of the Arrangement Act, the same quality is impressed on the annuities substituted for them. I have already stated grounds, and, as I conceive, strong grounds, for thinking, that these dividends were not payable as rent due to a feudal superior, but as a charge on the Caledonian Railway, irrespective of the feudal title in the Barrhead Company. The correctness of this view of the case is, I conceive, fully established by a clause of the act, to which I have not yet referred, the forty-second. It is this: "The five guaranteed companies, hereinbefore mentioned," (that is, the four which were absolutely transferred, and the Barrhead Railway Company,) "shall, from and after the 1st day of August 1851, he deemed respectively to be creditors of the company, in respect of the fixed annuities hereinbefore made payable to them respectively, and shall be entitled not only, at all times, to render effectual the liens or securities hereinafter mentioned, but, as ordinary creditors, to raise any action or suit against the company, and to take all other proceedings which may be considered necessary or expedient for securing or recovering, by legal diligence, such fixed annuities, or the balance thereof, which may at any time be unpaid." Then there is a provision as to the priority of the railways amongst one another.

It will be seen, that all the five annuities are classed together. The enactment was necessary, or, at all events, useful, so far as related to the four railways transferred absolutely to the Caledonian Company, for without such a clause there is nothing in the act which would make them ordinary creditors for the amount of their annuities. The same observation applies also to the Barrhead Company, if their rights to the dividends, and so to the substituted annuity, is to be regarded, as I think it is, as being a collateral and independent charge on the Caledonian Company. It is unmeaning and unnecessary if the annuity is to be treated as rent, for then the

Barrhead Company would, without any such clause, be entitled, as an ordinary creditor, to raise an action against the Caledonian Company for any arrears of the annuity from time to time due. It would be an ordinary action by a landlord against his tenant for rent.

These considerations have satisfied me, that the two Judges of the Second Division of the Court of Session were wrong in affirming the interlocutor of the Lord Ordinary; and that Lord Wood was right in thinking that it ought to be reversed.

This result is conformable not only to the strict law of the case as deducible from the acts of parliament, but also as, I think, to substantial justice. To the parish it is a matter of indifference which company is to pay the rate. But I can hardly believe, that it ever entered into the contemplation of the Barrhead Company, that by making, or of the Caledonian Company that by taking, the transfer (for so in effect it was) of the Barrhead line, through the machinery of a 999 years' lease, instead of an absolute assignation, the substantial rights of either party to the transaction were to be varied. All the provisions of the acts which, for this purpose, must be looked to as embodying the intentions of the two companies, seem to me to point to the contrary and to shew, that the difference in the mode of transfer was considered by them as merely a difference of form. I am therefore of opinion that the interlocutors appealed from ought to be reversed.

LORD CHELMSFORD.—My Lords, the question in this case is, which of the two railway companies is liable to be assessed to the poor's rate of the Abbey Parish of Paisley, as owners of the Barrhead Railway; it being admitted that the Caledonian Company is liable to the assessment as occupiers. The 8th and 9th Vict. c. 83, the act for the administration of the laws relating to the relief of the poor in Scotland, gives, in the first section a definition of the term "owners," by which it is to "apply to liferenters as well as fiars and tutors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in the actual receipt of the rents and profits of lands and heritages;" and the words "lands and heritages" are to extend to and include "railways."

The question therefore is, which of the two companies is in receipt of the rents and profits of the Barrhead Railway, so as to be clothed with the character of owners under the Act of Parliament.

As my noble and learned friend, the LORD CHANCELLOR, has fully stated the different provisions of the acts of parliament, and the terms of the lease upon which the question depends, it is unnecessary for me to repeat them. Under the acts of parliament, and the lease made in pursuance and fulfilment of the Leasing Act, the appellants contend, that they were divested of the whole property in their railway; and that it was as completely transferred to the Caledonian Company during the 999 years' term, as if that company had been named in the act for constructing the Barrhead Railway instead of the Barrhead Company; and that the Caledonian Company being in the receipt of all the profits of the railway, they are the real owners within the meaning of the Poor Law Act. The respondents, on the other hand, say, that the transactions between the companies were merely the grant of a lease, and the consequent creation of the relation of landlord and tenant between them; that the dividends, in the first place, and afterwards the fixed annuities payable for the benefit of the shareholders, were nothing but a rent which constituted a receipt of the profits of the Barrhead Company; and that a reversion being left in them, they continued the fiars, and, as such, the owners of the railway within the act of 8 & 9 Vict. cap. 83.

I have very carefully considered the provisions of the different acts which have been relied upon by the parties respectively, and I have arrived at the conclusion, that the view of this case presented to your Lordships on behalf of the appellants is the correct one. I think that no stress can properly be laid upon the word "perpetuity" in the provision for the payment of the annuity, as importing an absolute transfer for ever of the Barrhead Railway, as it must be taken to be used in contradistinction to the three years during which the smaller annuity is to be paid, and to mean, that afterwards, perpetually during the term, the larger sum is to be payable. If, therefore, the mere creation of a term of 999 years was a bar to the Caledonian Company becoming owners within the meaning of the act, the appellants' case must fail. And this, as it appears to me, would also be the case if they were driven to rely upon the words of the Leasing Act, as expressly throwing the assessment upon the Caledonian Company. For the word "liabilities," in the third section of that act, looking to the context, and to the word "existing," which applies to it, seems to me to be intended to include merely those liabilities which, at the time of the passing of the act, had been created by the company. And the 12th section does not extend to all debts and monies, but to such debts and monies as, immediately before the execution and delivery of the deeds, were due and owing by the Barrhead Company, or for the payment of which, but for the passing of the act, they would have been liable. And this limitation of the meaning of these words is confirmed by the subsequent part of the section which gives validity to such conveyances, &c., as were made or entered into before the execution and delivery as aforesaid of the said deeds. Although this construction carries the 12th section, in respect of liabilities,

no further than the 3d section, and thus renders it, in this respect, unnecessary, it furnishes no reason for presuming, that the legislature had a different intention in the two sections.

My opinion, in this case, proceeds entirely upon such an intentional transfer of all the right and interest of the Barrhead Company, during the 999 years, as to preclude the possibility of considering them as standing in the relation of landlord and tenant to each other. Upon this view of the question, I think, that the length of the lease has a most important bearing, although, in other respects, it might be an immaterial circumstance for determining whether the relation of landlord and tenant was created.

It must be borne in mind, that the Caledonian Company had had transactions with other railway companies before this arrangement with the Barrhead Company; and as not very long after the lease was executed, these companies, which had been dissolved, were re-incorporated, it is not unreasonable to suppose that, before their agreement with the Barrhead Company, the Caledonian Company had found the inconvenience of dealing in this manner with companies, whose powers they were desirous of exercising. For these purposes a transfer of 999 years was as good as one in perpetuity; and, therefore, by the Leasing Act, they obtained authority for the Barrhead Company to grant them a lease, not (as was observed) "by which," but "upon the execution of which," the railways, &c., and all other property or effects whatsoever, and all the rights, privileges, powers, and authorities given to or vested in the Barrhead Company under their acts, or any deeds granted in pursuance of such acts, subject, as therein mentioned, are transferred to and vested in the Caledonian Company in the same manner and to the same extent as if the undertakings authorized to be made and maintained by such acts had been originally authorized to be made and maintained by the said company, or as if their name had been inserted in such acts in lieu of the name of the Barrhead Company." But then it must have occurred to the framers of the act, that if all the property of every description, and all the rights, privileges, powers, and authorities of the Barrhead Company were to be transferred to and to be exercised by the Caledonian Company as completely as if the acts respecting the Barrhead Railway had originally conferred them, there might be strong grounds for contending, that the Barrhead Company was thereby dissolved, as they had nothing which they could call their own, nor any acts to perform by which continued existence could be indicated. For this reason, and probably not without reference to the transactions of the Caledonian Company with the other companies, the 4th section of the Leasing Act provides, that nothing in the act shall be held to disincorporate the Barrhead Company. But as their existence was only required in respect of the dividends which were to be paid to their shareholders, the powers and provisions of the Companies Clauses Consolidation Act, and of th ir acts, are reserved to them, so far as powers and provisions have reference solely to the capital of the company, or the government and constitution thereof,—all other powers and provisions having, by the previous section, been given to the Caledonian Company.

It is said, however, that the transfer, though absolute in its terms, does not confer any greater power than a tenant obtains by a lease of land during its continuance; and, therefore, that whatever may be the extent of the rights transferred to the Caledonian Company, if they hold the railway upon a rent to be paid to the Barrhead Company, the relation of landlord and tenant must subsist between them. In considering this question, I am not influenced by the name which is given to the payment made by the Caledonian Company. Whether it is called rent or dividend, it is the substance of the thing which must be alone regarded. Now, against the notion of its being a rent reserved by the Barrhead Company, it is a strong circumstance that it does not issue out of the property leased; the dividend is to be paid from the general fund or profits of the Caledonian Railway. It is true that these funds or profits will be increased by the receipts from the Barrhead line. But that no part of the reserved payment was intended to issue out of the Barrhead line appears from the clause by which a lien was given over the Barrhead line to the holders of the shares, who were to receive dividends from the Caledonian Company, and which would have been quite unnecessary if they were already entitled to have recourse to that line for satisfaction of a rent. This is made even more clear by the Arrangement Act, under which the judicial factor who may be appointed to enforce the lien is limited to the collection of the revenue of that railway only over which the lien extends. And as a landlord is a creditor for his rent, and is at all times entitled to summary diligence to enforce the payment of it, it seems to be a strong circumstance to shew, that the fixed annuity, which was substituted for the dividends, is not a rent, that it was considered necessary to provide by the 42d section of the act, as has been pointed out by my noble and learned friend (LORD CRANWORTH), that the guaranteed companies should be deemed the creditors of the Caledonian Company, and should be at liberty to raise any action or suit against the company to secure or recover the annuities. This Arrangement Act seems to me, as it does to my noble and learned friend LORD CRANWORTH, to throw great light on the whole case. It deals with five companies, and with all of them in precisely the same manner. It re-incorporates those of them which had been already dissolved; and by so doing it brings all the four other companies into exactly the same situation as that in

which the Barrhead Company is placed under the Leasing Act. The rights and interests of those four companies are transferred to the Caledonian Company in perpetuity, and the payments which are to be made to them are word for word the same as those to be made to the Barrhead Company. Are the Caledonian Company the owners and in receipt of the rents and profits of those lines? It is impossible to answer otherwise than in the affirmative. What difference, then, is there between those four companies and the Barrhead Company, except the distant reversion which exists in the latter case? But that reversion does not, in the smallest degree, affect the question of the receipt of rents and profits during the term. And if the rents and profits are received by the Caledonian Company, they are the owners under the act, at least during the continuance of the term.

There is one more argument, arising out of this Arrangement Act, to shew that the Caledonian Company are the owners of the Barrhead line, which must not be overlooked. By the 46th section, "the judicial factor is to defray, out of the revenues of the railway, the working expenses, including feu duties and other charges, usually and properly charged to the debit of the revenue account, and only to apply the balance, after these deductions, for the use and behoof of the guaranteed company." The appellants contend that, as these feu duties are payable by a feuar to his superior, and are directed to be paid by the judicial factor before the balance of the revenues is to be applied, the Caledonian Company are thus made liable for these feu duties, which can only be upon the ground of their being regarded as owners. The respondents explain this deduction of the feu duties, by alleging that the judicial factor is in the same situation as an adjudger, or any other person who is put into possession of the land to receive the profits for a time, and who is bound to pay those duties upon condition of the payments of which the land is held. But I think it is clear from the following section (the 47th), that the feu duties were not to be paid on account of the Barrhead Company. By this section the Caledonian Company are entitled to recall the appointment of the judicial factor, only on the terms of paying all the arrears of annuity due at the time of his appointment, which arrears they would not have been liable to pay in full. If the feu duties were to be charged against the Barrhead Company, and if the balance of the revenues, after deducting the feu duties, should be insufficient to pay what is due upon the annuity, the judicial factor would be entitled, under these provisions of the act, to continue his collection till the arrears were fully satisfied, and not merely till he has received the arrears, *minus* the feu duties. For these reasons, I am of opinion that the Barrhead Company are not liable to be assessed to the relief of the poor, as owners of the Barrhead Railway, and that the interlocutors appealed from ought to be reversed.

Mr. Rolt.—I do not know whether, for the appellants, I might suggest that the form would be to reverse the interlocutors, so far as appealed against, with a declaration, according to the first alternative conclusion of the summons of declarator, and, as in the last case, to order repayment of the expenses ordered to be paid by the appellants, and payment of the costs in the Court below, with a remit.

The *Attorney-General.*—It will be a very involved order.

LORD CHANCELLOR.—It will be a very involved order. If there is any dispute about it, it may afterwards be settled. But the question which I shall have to put to the House will be, that the interlocutor finding that the Barrhead Railway Company are owners, and are liable to be assessed to the poor for the Abbey Parish of Paisley, be reversed. Then the order would follow the precedent that we laid down in the last case, so far as it applies. The Attorney-General has suggested that it will be a complicated order, because there are a number of appeals in this controversy, and all those will have to be embraced in the order finally made.

LORD BROUGHAM.—There will be no difficulty about it.

The *Attorney-General.*—I think, my Lord, we shall agree upon it.

LORD BROUGHAM.—What is the meaning of this—"one fifth of the taxed amount being deducted"?

Mr. Rolt.—I cannot say what is the reason of it.

The *Attorney-General.*—We only got four fifths—they gave us only four fifths of the expenses in the Court below. I cannot tell the reason. With respect to the form of your Lordships' order, I have no doubt that my learned friend and myself will agree. If any point arises, perhaps one of your Lordships will permit us to refer it to you.

Interlocutors reversed, with a declaration.

Appellants' Agents, Loch and Maclaurin, Solicitors, London; Patrick Graham, W.S. Edinburgh.—*Respondents' Agents*, Grahame, Weems, and Grahame, Solicitors, London; Hope and Mackay, W.S. Edinburgh.