

CALEDONIAN RAILWAY COMPANY, . APPELLANTS.
SIR NORMAN MACDONALD LOCKHART, RESPONDENT.

1860.
March 7th, 8th,
and 23rd.

Submission—Award—Scottish General Railway Acts (a).—

A submission under these Acts may, by consent, be made to embrace incidents and to import powers not included in a reference proceeding simply on the statutory clauses. Such a reference may be based on the statutes and on the common law, and may derive efficacy from both.

There is nothing in the Railway Acts to prohibit the parties from enlarging the time for making the award.

Death of one of the Parties.—Even at common law, the death of a party does not operate as a revocation of a submission, where the arbiter is in the situation of a person appointed by vendor and purchaser to fix the value and price of an estate sold.

If one of the contracting parties in such a case were to die, the surviving party and the representative of the deceased would be compellable respectively to fulfil the contract.

Delegation to an Expert.—It is not *ultra vires* of an arbiter to remit to an expert. He may consult men of science, or call in a valuer to assist him, unless prohibited by the terms of the submission.

Prospective Damage.—Where damages can be reasonably foreseen and estimated, it may be very fit and convenient that an arbiter should ascertain the amount by at once awarding a fixed sum of money.

THIS case is fully reported in the Second Series (b).

The action was brought by the Company against Sir Norman Lockhart in March 1852 to reduce and set aside two awards or decrees arbitral pronounced

(a) The Companies Clauses Act, 8 Vict. c. 17; the Lands Clauses Act, 8 Vict. c. 19; and the Railways Clauses Consolidation (Scotland) Act, 8 & 9 Vict. c. 33.

(b) Vol. xix. p. 527.

by Mr. Low, the Professor of Agriculture in the University of Edinburgh. The grounds of reduction were chiefly twofold; namely, that the arbiter's authority at the time of his awards had expired, and that he had exceeded his powers.

The facts were that in order to the formation of their railway it had become necessary for the Company to acquire certain portions of the late Sir Norman's estates in the county of Lanark. They accordingly gave him the notice prescribed by statute, and they required from him the particulars of his interest, "and of the claims made by him in respect thereof." Sir Norman gave in his claim, consisting, 1, of his demand simply in respect of the land proposed to be taken; 2, of his demand in respect of intersectional damage; 3, of his demand in respect of injury to the amenity of his mansion house; 4, of his demand in respect of the value of wood; and 5, of his demand in respect of roads, bridges, accesses, and embankments required for the protection of the grounds.

The Company refused to pay the amount claimed, and they further refused to execute the works required by Sir Norman.

Under these circumstances it was mutually agreed that the whole matters in dispute should be referred to the arbitration of Professor Low, and a deed for the purpose was accordingly prepared and executed. On the 22nd January 1848 the arbiter pronounced an interim award; and he was preparing to pronounce a second, when Sir Norman died on the 9th May 1849, and was succeeded in the family estates by his son the present Sir Norman, the Respondent.

On the 20th June 1850 the arbiter pronounced his final award.

These were the awards which the Company sought to set aside.

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The Court of Session (First Division), on the 25th February 1857, repelled the reasons of reduction, and assoilzied Sir Norman Lockhart from the conclusions of the summons.

Against this judgment the Company appealed to the House, Mr. *Roundell Palmer* and Mr. *Rolt* being of Counsel on their behalf.

The *Attorney-General* (a), Sir *Hugh Cairns*, and Mr. *Anderson* for the Respondent.

The facts and the authorities are fully stated in the following opinions.

Lord Chancellor's
opinion.

The LORD CHANCELLOR (b):

My Lords, the first ground on which the Appellants seek the reduction of the two decreets arbitral, the subject of this litigation, is that the authority of the arbiter had expired before they were executed.

There has been much controversy as to whether the submission is to be considered to have been under the statute 8 & 9 Vict. c. 19, or at common law, or partly under the statute and partly at common law. The Appellants contend that, whatever view is taken of this question, the decreets arbitral are void; alleging that, if the submission was under the statute, the authority of the arbiter determined at the expiration of three months from its date; that if the submission was at common law, the authority of the arbiter expired at the death of Sir Norman Lockhart; and that if the submission be of a mixed nature, the authority of the arbiter must be considered as entirely gone before he executed the final decret arbitral, so that the interim decret arbitral became a nullity.

But I am clearly of opinion that whatever view is taken of the nature of the submission, the authority

(a) Sir Richard Bethell.

(b) Lord Campbell.

of the arbiter continued in full vigour down to the time when he executed the final decret arbitral. The 35th section of 8 & 9 Vict. c. 19. says, that "if when the matter shall have been referred to arbitration, the arbiters or their umpire shall for three months have failed to make their or his award, the question of compensation shall be settled by the verdict of a jury." But this is merely a power given for the advantage of the parties, enabling either party to obtain a settlement of the compensation by a jury in case of improper delay in the arbitration, and this advantage the parties might renounce. It could not possibly have been the intention of the Legislature to prohibit the parties from enlarging the time for making the award for a week, if at the expiration of three months from the date of the submission the arbiters, after great labour bestowed and heavy expense incurred, required a few days more to complete their inquiries and perfect their calculations. It seems to me absurd to suppose (as was suggested) that this enlargement could only take place once for three months. Neither the statute nor common law, nor common sense, imposes such a limit on the power. Here, by the mutual consent of both parties, the time was enlarged in writing in a way familiarly known according to Scotch procedure ; and the enlargement of the 6th and 9th November 1846 amounted to a fresh submission, giving the arbiter, in the most express language, "at his pleasure power further to enlarge the time, both parties binding and obliging themselves to acquiesce in and fulfil his award, and homologating and confirming the bygone prorogations." Accordingly the Appellants continued to attend the arbiter, and acquiesced in his authority till the interim award was executed.

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The Appellants next contend that the authority of the arbiter expired at the death of Sir Norman

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Lockhart. But although, generally speaking, the authority of an arbiter by the law of Scotland does expire on the death of either of the parties, I am of opinion that if this was merely a conventional or common law submission, the intention of the parties was to include in it the provision of the statute, that it should not determine by the death of the landowner who was claiming the value of his land taken by the Company, and compensation for the damage done to the rest of his estate by the severance and the works which the Company had constructed and were about to construct, under the powers of their special Act. The arbiter was in the situation of a person appointed by vendor and purchaser to fix the value and price of an estate sold. And the case of *Lord Selkirk v. Nasmith* (a) clearly shows that when there is any such reference, it is, by the law of Scotland, to proceed notwithstanding the death of one of the parties. Therefore, in any way in which the nature of the submission may be regarded, there seems to me to be no doubt that the authority which it originally conferred remained in the arbiter till he had executed the final decret arbitral.

But we have had an argument to prove that both decreets are void by reason of the misconduct of the arbiter. The seventh plea in law, which would have admitted this ground of reduction, was abandoned in the Court below, as is mentioned in an Interlocutor not appealed against. I do not wonder that it was abandoned, for there seems to me to be no evidence whatever to support it. What is now chiefly relied upon is the remit to Mr. Newlands as an expert, which is said to be contrary to the maxim "*Delegatus non potest delegari.*" In answer it has been shown to us that this proceeding was according to the established practice of Courts of Justice in Scotland

(a) Morr. 627.

and of judicial arbiters. Indeed, the remit never was complained of by the Company, nor by the Counsel in the Court of Session. An opportunity was afterwards given of examining Mr. Newlands as a witness, when a great number of witnesses were examined on both sides.

Again, it is said that the awards are not binding because Sir Norman Lockhart is sometimes designated in the pleadings "heir of entail." But there is nothing to show that he was not a proprietor of his estate, with full powers to do all that he did in his dealings with the Company; and there is no colour for saying that they can be in any danger from any claims to be made by his successors.

However, on the part of the Appellants the chief stress was laid upon the arbiter having exceeded his authority; and the decreets arbitral would be void if he had therein awarded beyond his authority anything to the prejudice of the Appellants, which could not be severed from what he has lawfully awarded within the scope of his authority.

The direction about insurance against fire, even were there a plea to meet it, could not I think be considered of this description, for it may clearly be severed from the rest of the award, and if *ultra vires* would not be binding; and the same may be said of the sum to be paid for clearing the burn. The chief objection was made to the award of compensation for damage likely to be sustained, in future, from the water of the Clyde being penned back by the works of the Company, and thereby damaging the land of the claimant. It was contended that such prospective damage could not properly be included in the award; and, that if any such damage should arise, the proper remedy would be an action against the Company. But I am of opinion that the arbiter was bound to take into his consideration the damage to the land of the

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claimant likely to be produced by the works which the Company were authorized to construct and were constructing by virtue of an Act of Parliament, and that no future action could be brought against the Company, except for negligence in the original construction of these works, or in the manner in which these works were kept in repair.

To support this objection the judgment of the Court in the case of *Lawrence v. The Great Northern Railway* (a) was cited. But when the judgment of the Court, delivered by *Patteson, J.*, is examined, it will be found that the action there rested on *negligence*; for he draws the distinction between that case and *Rex v. Pease* (b), where the Defendant had done nothing but in strict accordance with the Act of Parliament; and he concludes thus: "Here the Company might by executing their works with proper caution have avoided the injury which the Plaintiff has sustained. We think that the want of such caution is sufficient to sustain the action."

In *Vaughan v. Taff Vale Railway Company* (c), in which an action was held maintainable against a railway company for damage done to a wood adjoining the railway from sparks flying from the engine, negligence was alleged by the declaration and found by the jury.

It would, indeed, have been strange if, although the mound which the Appellants were constructing across the valley of the Clyde under the powers of the Act of Parliament would certainly force back the water, to the injury of the claimant's land, every time the Clyde was in flood, and there was a moral certainty that the Clyde would periodically be in flood, the damage likely to be done could not be calculated and included

(a) 16 Q. B. Rep. 643.

(b) 4 Barn. & Adol. 30.

(c) 3 Hurl. & Norm. 743.

in the compensation, once for all to be awarded, and if the remedy intended for him was a fresh arbitration *toties quoties* when the flood came down.

Objection was then made to compensation being given for prospective damage to land of the claimants injuriously affected, not confining the claim to the land which the Company were entitled to purchase. But I think that the right to compensation extends to any land of the claimant injured by the severance of that which is purchased, or by the works which the Company are authorized to construct; and the test is, whether the land which the claimant retains can be proved to be injuriously affected by this severance or by these works. The right to compensation depends on "cause and effect," not on "distance or proximity."

The only plausible argument, as it seems to me, for the reduction was founded on the second article in the final decret arbitral: "*Secundo*.—In respect that the sums found due by this and my interim decree arbitral aforesaid include *inter alia* the sum of 4,000*l.* awarded to the said deceased Sir Norman Lockhart as compensation for the damages occasioned to his property by the operations of the said Company in carrying their line of railway across the valley of the Clyde, I find that the said Sir Norman Lockhart, and the succeeding heirs of entail, shall relieve the said Railway Company of any claims which his present tenants whose farms are not intersected by the said railway may be enabled to establish against the said Company in consequence of their said operations, to the extent of the interest accruing on the said sum of 4,000*l.*, from and after the date hereof, calculated at the rate of three and a half per cent. per annum, but under deduction of the sum of 16*l.* 4*s.* per annum, included in the abatement of 49*l.* 15*s.* to be allowed by Sir Norman Lockhart to the tenant of Wester-Lampits

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in terms of my said interim decree arbitral ; and I decern accordingly." This objection is distinctly made by a plea in law ; and at first it seemed fatal, upon the suggestion that the arbiter had included in the compensation to Sir Norman Lockhart what was due to a class of his tenants who themselves had claims for compensation which they might bring forward against the Company. But upon a proper examination of the decreets arbitral it was made out to my satisfaction, that no sum was awarded under this head to which Sir Norman Lockhart was not himself entitled ; and that the Company cannot be in the slightest degree prejudiced by the conditional indemnity which is provided. Indeed, there is reason to believe that this clause was introduced for the security of the Company at their own request.

It was suggested at the bar on the part of the Appellants, that if the House should not give judgment for the entire reduction of the decreets arbitral, we should make a declaration as to the nullity of any part of them which may be considered *ultra vires* and not binding ; but there being nothing in the decreets arbitral by which they are nullified, I am of opinion that we are not bound to follow the course proposed, and I must advise your Lordships simply to adjudge that the Appeal be dismissed with costs.

Lord Cranworth's
opinion.

LORD CRANWORTH :

My Lords, the point argued at the bar on the second, third, and fourth pleas was that the arbiter, when he made his decret arbitral, had ceased to have any authority ; for that if the submission was to be regarded as a submission under the statute, all the authority of the arbiter ended by reason of the indefinite prorogations made in this case. If, on the other hand, it was not an arbitration under the Statute, then

it fell by reason of the death of Sir Norman Lockhart before the making of the decret arbitral.

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I think there is no weight in these objections. The arbitration was not strictly an arbitration under the statute. The parties agreed to give to the decret arbitral certain incidents not belonging to it by force of the Statute ; and for that (if for no other reason) the arbitration was not merely a proceeding under the statute. But the inquiry as to whether it was or was not merely statutable appears to me an idle waste of time ; for if it had been merely a statutable proceeding, I see no reason to doubt that it would be competent to the parties to authorize prorogation as long as they might think it for their interest to keep the arbitration on foot, at least within reasonable bounds. The provision in the statute that if the decret is not made within a specified time the matter shall be settled by a jury, is a stipulation introduced to prevent either party to the submission being prejudiced by unreasonable delay, and could not have been meant to prevent any extension of time which both parties considered desirable for their common convenience. The consequence is that the prorogations did not invalidate the proceeding, treating it as statutable. On the other hand, treating it as an arbitration not under the statute, I am of opinion that it was not brought to an end by the death of Sir Norman: He was in substance a vendor selling his land to the Company ; his obligation was to part with his land, and to part with it for a consideration to be ascertained in a particular mode. There is authority for saying that when the amount of the consideration has been ascertained in the stipulated mode, the vendor's representatives are bound to do what he would himself have been bound to do if he had lived. The present case cannot be distinguished in principle from that of

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Lord Selkirk v. Nasmith (a), referred to in the Respondent's case, page 33. Even if this were not so, still I think that the death was not in this case important; for the arbitration was intended by the parties to be conducted, as far as might be, under the sanction of the statute. And I see no reason why we may not hold that this statutable incident giving validity to the proceeding notwithstanding the death of one of the parties would prevail, even though the parties may have added other sanctions not contemplated by the statute. On these short grounds, therefore, I concur with the *Lord Chancellor* on this first point. I think there is no ground for saying that the power of the arbiter had expired before he made his decret arbitral.

The other point insisted on by the Appellants arises on the sixth plea. They contend that, supposing the arbiter had jurisdiction to make his decreets arbitral, they are void as being in two respects *ultra vires*: first, because the arbiter gave decree for damages entirely prospective and contingent; and secondly, because he gave decree in favour of Sir Norman for damages assumed to be likely to be incurred by tenants whose lands are not traversed by the railway, and who were not parties to the submission.

On the first point the argument of the Appellants rests on no foundation whatever. When the Legislature authorizes the making of a railway and enables the Company, for the purpose of its construction, to take the lands over which it passes, it expressly binds the Company to compensate those whose land it takes, not only for the value of the land taken, but for all incidental damage which the making of the railway may occasion. When the amount to be paid to a

(a) Morr. 627.

landowner is left to be settled by an arbitrator, it is for him to say whether the probability of this incidental damage is so great as to enable him to treat it as a matter practically lessening the value of the property of the landowner not taken for the railway. If he is satisfied that it is so, he is not only authorized but bound to award compensation. And this is what has been done in the present case.

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With respect to the second ground, the facts are as follows:—The arbiter awarded compensation to Sir Norman for contingent damage occasioned to his property by the carrying of the railway across the valley of the Clyde. The lands thus damaged were not traversed by the railway, and were, as to part at all events, in the occupation, not of Sir Norman himself, but of his tenants. Of the right of the arbiter to award compensation to the landowner in such a case there cannot, as I have already stated, be any doubt, and the only question is whether the decret is vitiated and made liable to reduction because the arbiter has added that in respect of the sum awarded for damage to these lands the landowner shall, to the extent of the interest of the sum awarded, indemnify the Company against any claim on them by the tenants; for that is the true effect of the award.

I can discover nothing in this direction which can invalidate the award. The sum awarded on this head was 4,000*l.*; and one must assume that to have been the fair compensation for the damage occasioned to the lands, that is, to the inheritance. No claim had been made by the tenants of the lands in question, but the arbiter thought they might set up a claim at some future time. If the arbiter was mistaken in thinking that such a claim could be set up by the tenants of farms not intersected, then the direction in question is one which must be inoperative, and therefore harmless.

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But suppose that any such claim could be asserted, I can see nothing unjust or *ultra vires* in the direction that to the extent of the interest of the capital sum awarded, and which in effect becomes part of the inheritance, the Company should be protected against the future claims of the existing tenants. In dealing with such a subject as that of future probable damage and giving an immediate sum certain as the fair compensation to the landowner in consideration of his becoming exposed to evils which may be greater or may be less, or even may never arise at all, it is impossible to do more than approximate to strict justice. And the course taken here by the arbiter seems to me to be one which might be not unreasonable. He in substance increases the value of the inheritance by a sum of 4,000*l.* If the contemplated probable evils should turn out to be less than the arbiter contemplated, he will have given too much—if greater he will have given too little. No one can contend that on such a ground the award is bad. How is the case varied by the circumstance that the sum awarded is not an absolute sum of 4,000*l.*, but a sum of 4,000*l.* liable, to the extent of the interest thereon, to indemnify the Company against certain possible claims of the then existing tenants of the lands in respect of the probable damage for which the 4,000*l.* was awarded? I see no reason for thinking that this was not within the competency of the arbiter. The 4,000*l.* can only be withdrawn from the bank in which it is deposited by an order of the Court of Session, and due care will of course be taken, that it is not withdrawn till the time is past within which any claim can be made on it.

Therefore, even independently of the view of this case taken by the *Lord Chancellor* (in which I entirely concur), namely, that the error (if error it be) does

not afford ground for reduction, I concur in the conclusion that the decree below ought to be affirmed.

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I have not adverted to any of the other objections insisted on at the bar, none of them in my judgment being raised by the pleadings; but it is right I should say that if they had been legitimately before the House, I should concur with the *Lord Chancellor* in thinking that they were unfounded.

Lord WENSLEYDALE :

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My Lords, I also think that the judgment of the Court of Session should be affirmed. During the course of the argument at your Lordships' bar I have felt very great doubt, but that doubt affects a very small part of this case, and must give way to the opinions already expressed.

The most important objections to the decree arbitral were these, 1st, that the submission to arbitration was either statutory, under the 8 Vict. c. 19, or at common law, and in either supposition, the award was void; 2nd, that the arbiter acted without authority in employing an engineer to survey and report, and so delegated a part of his judicial duty to him; 3rd, that he also acted without authority in awarding prospective and contingent damages; 4th, that in awarding a sum of money to Sir Norman Lockhart, as a compensation for damages, he imposed an obligation on him to relieve the Railway Company of the claims of tenants whose lands are not intersected by the railway, and that those claims were uncertain, and rendered the sum payable to Sir Norman uncertain.

Several other objections were made in the argument but they are either of no weight, or if of any, are not open upon any of the pleas in law. The most important

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of the objections I have mentioned is in my mind the fourth.

The first objection was stated in the form of a dilemma, that it was either a statutory arbitration or one at common law. If statutory, it was said that it expired at the end of three months, according to the 35th section of the Lands Clauses Consolidation Act of Scotland, 1845, and could not be extended beyond that period by consent; and that if it was at common law, it fell by the death of Sir Norman before the final decree arbitral. I am clearly of opinion that this objection is unfounded. The 35th section is, I think, introduced for the benefit of both parties, that the settlement of the question of compensation might not lie over indefinitely, which it would do, if the parties had not stipulated that the award should be made in a certain time. It would have depended upon the mere will of the arbitrator when he should choose to make his award, and the power of appeal to a jury would be entirely taken away. I think that the principle "*Quilibet potest remunerari jure pro se introducto*," applies, and that it was competent for both parties to agree to enlarge the time. Further, there is no doubt that they did so, by the enlargement to a day in blank (which in effect by the Scotch law is for one year and a day) and also by their subsequent conduct. If the arbitration therefore was statutory, it did not fail on this ground.

If it was an arbitration at common law, it is contended that it failed by the death of one of the parties, Sir Norman. I am of opinion also that this objection must fail. Though the agreement is in form a submission to arbitration, it is really in the nature of an agreement to purchase land from Sir Norman, and the right, so far as related to him, to construct the railroad upon it. It is like a binding agreement to

purchase an estate at a price to be fixed by a third person, and if one of the contracting parties in such a case were to die the contract would still be binding, and the surviving party and the representative of the deceased would be compellable respectively to fulfil it.

It is therefore unnecessary to determine whether the arbitration is statutory or at common law. But I rather think it is, as it has been termed in the course of the argument, "hybrid." It is compounded of both, and so considered, it includes in it, by reference to the statute, the statutory provision that it shall not fail by the death of one of the parties. The first objection therefore cannot avail the Appellants.

The second objection, that the arbiter acted "*ultra vires*" in employing an expert to survey and report, is not maintainable. An arbitrator is not bound to examine witnesses, and cannot by the law of England insist upon their being examined on oath, unless the submission provides for it. By the 31st section of the above-mentioned Act he may, but is not bound to, examine the parties and their witnesses on oath; nor is he prevented from consulting men of science in every department where it becomes necessary. So he has a power to call in a valuer to assist him unless restricted by the terms of the submission. That was decided in the case of *Anderson v. Wallace* (a).

As little weight is due to the third objection, that the arbiter awarded prospective and contingent damages. The answer is, that he really has not done so. The compensation given is for the necessary damages by the construction of the railway and for the highly probable damages which would be occasioned in the ordinary course of events. It becomes, therefore, unnecessary to consider what would be the effect of

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(a) 3 Cl. & Finn. 26.

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awarding a sum for purely speculative damages not reasonably foreseen. Generally speaking, railway and other similar companies acquire Parliamentary powers to purchase land and to construct their works on condition of their paying the price of the land and the compensation to the parties who may sustain damage by the exercise of the acquired power to do acts, for which, if the authority of the Legislature had not been given, the landowners might have maintained an action. That price should be a full compensation, once for all, for the injury to those rights. When paid, the Company have obtained a lawful right to construct their works, and if they happen to injure anyone in the reasonable exercise of these rights so purchased, they are irresponsible for such injury. Those rights are given for the public good, and if an extraordinary unforeseen damage occur the suffering party must bear it, and is without remedy. But if those acquired rights are exercised unreasonably and without due care, those who have acquired them are responsible, as they are for their exercise of common law rights. *Sic utere tuo ut alienum non lædas.*

The case of *Lawrance v. Great Northern Railway* (a) may have been well decided as belonging to that class of cases in which the acquired right has been negligently executed, for which, therefore, an action would lie. I much doubt whether the Company would have been responsible for damages occasioned by the due exercise of their powers, though those damages were unforeseen at the time the compensation was settled and paid. In the case *Ex parte Ware* (b), the damage done to a distant piece of land was clearly not within the terms of the arbitration, the award on which was sought to be impeached; and the dictum of the *Lord*

(a) 16 Q. B. Rep. 643.

(b) 9 Exch. Rep. 395.

Chief Baron, that the claimant might proceed for further damages under the 68th section of the General Act, was clearly extra-judicial and was founded upon the authority of Lawrance's case.

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These observations of course do not apply to cases, of which there are some (*The King v. Leeds and Selby Railway Company (a)*, *Lee v. Milner (b)*), where, by the express terms of the Special Acts, compensation for damages from time to time sustained is payable.

The last objection is, in my view of the case, the most serious. It is, that the final decree arbitral is void in consequence of the direction comprised in it that the sum of 4,000*l.* and interest be awarded to Sir Norman as compensation for the damage occasioned to his property by the operations of the Company in carrying the line of railway across the valley of the Clyde; and it proceeds to find that Sir Norman and his heirs of entail shall relieve the Company of any claims which his present tenants whose farms are not intersected by the railway may be enabled to establish against the Company in consequence of their operations, to the *extent of the interest accruing* on the sum of 4,000*l.* from the date thereof, at the rate of three and a half per cent. per annum, subject to a deduction. It is said for the Appellants that it is immaterial whether those tenants had really any claim against the Company or not, for that it must be inferred that they were to pay more than for the actual damage done to Sir Norman as the price of his indemnity against those claims, and that it was impossible to say how much more; and that therefore the award in this respect was uncertain and void.

It is, however, in my mind very questionable whether those supposed claims of tenants are more

(a) 3 Ad. & Ell. 683.

(b) 2 Mee. & Wel. 839.

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than imaginary, and whether this clause has not been introduced into the decree, not because there was any real danger of valid complaints by such tenants, but to satisfy the importunity of the Appellants' solicitors, made before the arbitration was concluded, that the Appellants should know in what way the arbiter proposed to secure the Company against the tenants' claims, if the money was paid to Sir Norman. At all events, however, it is to be observed that this provision does not affect the principal sum of 4,000*l.* that is certainly due. It is the interest only which is affected in case any of the tenants' claims should be made good. This is not, properly speaking, an award in which every matter in dispute is to be finally disposed of, but a valuation; and the only effect of the objection ought to be that the valuation should be reduced *pro tanto*, if the Respondent should so consent to it. But having heard the opinion already given by my noble and learned friends, I agree with them in thinking that a sufficient case is not made out to reverse the judgment of the Court of Session either in whole or in part.

Lord Kingsdown's
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LORD KINGSDOWN :

My Lords, I entirely concur in the judgment which it is proposed to your Lordships to pronounce, and I think it would be only a waste of time if I were to go through the reasons which have been already to my mind satisfactorily given.

Interlocutors appealed from affirmed, and Appeal dismissed with Costs.

GRAHAME, WEEMS, AND GRAHAME—ROBERTSON AND
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