retroactive effect, is the apprehension that such a construction might operate unjustly as between parties who have contracted with reference to a different law from that enacted by the Statute. But that difficulty appears to have been disregarded in the case of *Fowler*, 10th November 1829, 6 Bingham, p. 258; and in the case of *Reid*, 3d March 1863, the judgment in this Court seems to have proceeded upon the ground that as the Act was an amending and remedial one, it must be construed so as to carry out the main object intended, even if the effect be to some extent retrospective, unless the words of the Statute necessarily exclude that construction. Now, one leading object of the Conjugal Rights Act was to amend the law relative to the administration and disposal of property belonging to married women in the lifetime of their husbands. But if, in a case like the present, where it is alleged that the rents of a property belonging to a married woman have for a series of years, and for eight years after the date of the Conjugal Rights Act, been drawn and expended by her without any interference on the part of her husband, he or his creditors were now to be held entitled to claim the whole rents as falling under the *jus mariti*, the remedial operation of the 16th section of the Act would in all such cases be defeated; and this is a result which ought, in the opinion of the Lord Ordinary, to be avoided unless there is some very clear and imperative provision of the statute to that effect.

"But the operation of the 16th section of the Act is not, in express terms, limited to the case of married women succeeding to property 'after the passing of the Act,' as the remedy provided by the 12th section is, in the case of the widows of parties dying infeft in property held burgage. There is a marked distinction between the sections in this respect; and as the words used in the 16th section are open to construction, the Lord Ordinary is at present disposed to think that the construction must be adopted which is most in consistency with the special object and spirit of the Act, and that the solution of the question here raised will mainly depend upon whether, at the time it was raised, the husband or his disponees had obtained that complete possession of the property which the proviso at the end of the 16th section requires in order to exclude the wife's claim. The Lord Ordinary has therefore allowed a proof before answer on this point; and the proof has been limited to this, because he understood parties were agreed in wishing the question raised in the second plea in law disposed of before that relative to the amount of the provision claimed was entered upon."

The defenders reclaimed

WATSON and ASHER for them.

The Court unanimously repelled the first branch of the defenders' second plea above quoted, and *quoad ultra* sustained the interlocutor of the Lord Ordinary.

Their Lordships were unanimously of opinion that the statute, being a remedial one, should be construed liberally. The grievance under which women suffered in having their inheritance carried away to pay their husband's debts was as serious in the case of successions which had opened prior to the passing of the Act as in those which opened afterwards. The whole spirit and intention of the Act showed that it was intended to have a retrospective effect.

Agents for the Pursuer—J. & A. Peddie, W.S.

Agent for the Defenders—James Webster, S.S.C.

Saturday, June 24.

FIRST DIVISION.

WEDDERBURN *v.* THE NORTH BRITISH RAILWAY COMPANY.

Railway—Statute—Railway Clauses Consolidation Act 1845, ⁋⁋ 27, 28, *and* 30. There being two methods distinguished in sections 27, 28, and 30 of the Railway Clauses Consolidation Act, of taking lands by a railway company for purposes accessory to the making of their line, one of which was by temporary, the other by permanent occupation:—

Held (1) that the notice required by section 28, in the case of temporary occupation merely, did not require any specification of the purposes for which the land was intended to be used.

(2) That land might thus be taken for temporary occupation, for the purposes of the neighbouring part of the line—the words "that portion of the line" in section 27, bearing a liberal but reasonable construction.

And (3) that under the words "other buildings of a temporary nature" in section 27, a pier or landing stage on the shore of a tidal or navigable river was included, if intended to be used for the purposes of landing or embarking materials for the construction of any portion of the line.

This was a suspension and interdict brought by Mr Wedderburn of Birkhill, proprietor of the lands of Wormit, and John Blair, his tenant, against the North British Railway, seeking to have them, and all others acting in their names, interdicted and prohibited from entering upon and occupying the lands delineated and described in the map or plan delivered by the said railway company to the complainer Mr Wedderburn, with the notice after mentioned, dated 22d May 1871, and coloured yellow in said plan, containing 9 acres and 857 decimal parts of an acre or thereby, belonging to the said complainer, and which said lands are situated in the parish of Forgan and county of Fife; and also from using the said lands for the erection of a pier for the unloading of barges, and of workshops, stores, and building-yards in connection with the construction of the railway bridge over the Firth of Tay, authorised by the North British Railway Tay Bridge and Railways Act, 1870.

The lands of Wormit lie on the south shore of the Tay, opposite and a little above the town of Dundee, having a sea boundary of about 1800 yards. The south end of the contemplated Tay Bridge is to rest upon these lands, and the line to proceed thence southward through them towards Leuchars, intersecting them for a distance of 150 yards. Land for the purpose of this line was taken by the company from the complainer, under their Tay Bridge Act, to the extent of an acre and a half. Thereafter the contractors for the Tay Bridge applied to the complainer for the use, for temporary purposes for three years, of certain ground in Wormit Bay. The negotiations connected with this application, however, came to nothing, and the company proceeded to exercise their compulsory powers under the Railway Clauses Consolidation Act. Accordingly they served upon the complainer a notice, dated the 22d day of May 1871,

intimating that they required temporary possession of the lands delineated and described on the map or plan delivered along with said notice, and thereon coloured "yellow," containing 9·850 acres, and also intimating that, under the powers contained in the Railway Clauses Consolidation Act, 1845, "the said company intend, at the expiration of ten days from the service of said notice, to enter upon and occupy the said lands so long as may be necessary for the construction of a portion of the railway and works connected therewith, authorised by the Act already mentioned, and therein called Railway No. 2."

The land thus proposed to be occupied lay on both sides of the line as it passed through the lands of Wormit.

The complainer Mr Wedderburn had a valuable right of fishing *ex adverso* of his lands, and which, from the nature of the shore, could only be exercised at three points, one of the three points being at the exact place where the company proposed to occupy land. The said notice being silent as to the purposes for which and the manner in which the lands were to be used, the complainers' agents wrote the law secretary of the company for some information on the subject, and also pointing out how the middle fishing shot would be affected, and desiring to know whether the company were prepared to come under any restrictions in their use of the land. To this letter the following was the answer sent, dated the 25th May:—"The additional land you refer to is only wanted temporarily. It is not wanted for materials, but merely for occupation for the construction of the railway and bridge. Of course the company will be responsible to Mr Wedderburn for whatever damage the operations will cause." The complainers' agents then wrote to the secretary of the company a letter, dated the 26th of May, again urging the propriety of their saying for what purposes the land was to be used by the company, and offering to arrange for what accommodation might be desired in a reasonable manner, but pointing out that the quantity of valuable arable land to be occupied was unusual; and besides injuriously affecting the complainer, Mr Wedderburn, and his tenants otherwise, the salmon fishing was in part to be taken away for a time, and perhaps permanently destroyed. In reply to the above letter, the secretary of the company wrote to the complainers' agents, under date 29th May 1871:—"The land wanted from Mr Wedderburn's property for temporary purposes will be occupied for various purposes connected with the construction of the bridge, such as workshops, stores, and building-yards, and also by a staging and jetty from and to which the barges used in the construction of the bridge may ply. The whole of these works will be removed upon the bridge being constructed."

In these circumstances, and mainly with a view to protect his fishings, the complainer found it necessary to bring the present process of suspension and interdict.

He pleaded—"(1) The notice served on the complainer Mr Wedderburn is not in accordance with the provisions of the Statute 8 and 9 Vict., cap. 33, in respect it does not specify the particular purposes for which the land is to be used. (2) By the Railways Clauses Consolidation Act a landowner is not bound to give up his land for any other purpose than the execution upon the particular land of the portion of the line appertaining thereto which the company are authorised by their Act to execute; and in respect it appears that the land in question is not to be so used, the respondents' contemplated proceedings are illegal, and ought to be interdicted. (3) Further, the respondents are not entitled compulsorily to occupy and use the complainers' lands for the erection of a pier for the unloading of barges, and of workshops, stores, and building-yards in connection with the construction of the said bridge. (4) The manner in which, and the purposes for which, the respondents propose to use the complainers' lands being wholly illegal, and contrary to the said Railways Clauses Consolidation (Scotland) Act, the complainers are entitled to suspension and interdict, with expenses."

The Lord Ordinary on the Bills (MACKENZIE) pronounced an interlocutor refusing the note.

Against this interlocutor the complainer reclaimed.

WATSON and GUTHRIE SMITH for him.

The SOLICITOR-GENERAL and BALFOUR, for the respondents, were not called upon.

Authorities referred to—*Poynder* v. *The Great Northern Railway Company*, 23d July 1847, 5 Railway Cases, 196; *Bentinck* v. *The Norfolk Estuary Company*, 26 L. J. Ch. 404; *R.* v. *The Wycombe Railway Company*, L. R., 2 Queen's Bench 310.

At advising—

LORD PRESIDENT—There are three grounds upon which this application for interdict is rested—1st, That the notice given in terms of the 28th section of the statute does not specify the purposes for which the land proposed to be taken was intended, and that therefore it is a defective notice; 2d, that the landowner is not bound to give up land for occupation by the Railway Company, except for the purposes of that part of their line adjacent thereto, or, as interpreted by Mr Smith in his argument, for the purposes of that part of the line which is parallel to the land occupied; and 3d, and last, that under no circumstances whatever can land be taken under the 27th section for the purposes of a pier, landing wharf, or, as Mr Smith termed it, a harbour. I am of opinion that all these grounds of interdict are unfounded; it is, in fact, difficult to say which of them is most unfounded.

I shall deal with them in the order stated. And first with regard to the question of notice. If you read the 27th, 28th, and 30th clauses of the Railway Clauses Consolidation Act, it is seen clearly that there are two modes distinguished throughout these clauses of taking land by a railway company for purposes accessory to the making of their line. These are, on the one hand, occupation for temporary purposes only—a kind of occupation which is exclusive of all idea of interfering with the substance of the ground occupied. On the other hand, we have the case of land taken for permanent purposes—for what the Act calls spoil banks and side cuttings,—or for obtaining material either for construction or repair. Now, the 28th section, which regulates the question of notice, distinctly distinguishes between these two. When land is required for these permanent purposes last mentioned, three weeks' notice must be given, and the notice must bear that the land is to be taken for such purposes. The notice therefore, in such cases will not be good except it specify that it is to be taken for one or more of such purposes. In the former case, however, when the land is only wanted for temporary uses, the notice re-

quired is only one of ten days. And there is nothing said in the Act about specification of purposes. And it would be very unreasonable if such specification were required where there is no carrying off of the property from the owner. The purposes of temporary occupation are so varied, and must often change so frequently during the occupation of the ground by the Company or their contractors, that it would be almost impossible for a railway company to specify in their notice all the uses to which the ground may, in the course of the prosecution of their works, be put. It may be used for the purpose of depositing materials of all descriptions, and it may be used for the purpose of manufacturing and working up these materials, or for the erection of sheds, workshops, and other buildings, and a great many other purposes. How could it be possible for the Company to specify beforehand to which of all these uses they may require to put the ground? It therefore appears to me that there is no obligation laid on them to specify in their notice the uses and purposes to which they intend putting the ground, and consequently that the complainer's first ground of objection is unfounded. Secondly, with regard to the portion of the line for the use of which the Company is allowed thus temporarily to occupy ground. This objection, especially as stated by Mr Smith, acquires great significance in the present case. For the line in question consists almost entirely of a bridge across the river Tay. If the Company's contention is sound, it would be impossible for the Company to get possession of any land for the purposes of their bridge works, for all the land passed through or over by this part of the line is sea. But the truth is, that the 27th section is not so expressed as to limit the right of the Company in the way contended for by the complainer. The clause gives power "to occupy the said lands so long as may be necessary for the construction or repair of that portion of the railway, and to use the same for any of the following purposes," &c. But construing this reasonably, and I see no rule to lead us to construe it otherwise, the clause gives power to occupy temporarily for the purpose of making that part of the line in the neighbourhood of the land occupied. Nothing unreasonable is authorised. It would not, for instance, be permitted under this clause to erect a great workshop to assist in the construction of the whole of a long line. The Court would soon put a stop to any such abuse as that. But nothing of the sort is intended here by the Railway Company. They want a portion of land at the south end, and I presume at the north end also, for the construction of their bridge, and having taken temporary possession of the land at these points, they mean to construct the bridge between them. For this contention, therefore, of the complainer I see no good ground. On the third point, it is said for him that the construction of a pier, or rather, as Mr Smith grandiloquently puts it, the construction of a harbour, is not one of the uses contemplated by the Act, I expect that if the Company were to construct a harbour there, and the Crown made no objection, Mr Wedderburn would make none either, seeing that he would have the reversion of it. But what is really meant to be made is merely a pier or landing stage for the purpose of embarking and disembarking materials for the construction of the bridge. Now, although that is not a purpose specially mentioned in the 27th section, it is still a most reasonable use to which to put the ground, when the object is to aid in the construction of the railway. If it is not covered by the words "other buildings of a temporary nature," I am at a loss to understand them. On every point, therefore, I think that the complainer has failed in establishing his case for an interdict, and the Lord Ordinary's interlocutor must therefore be adhered to.

LORDS DEAS, ARDMILLAN, and KINLOCH concurred.

Agents for the Complainer—Morton, Whitehead, & Greig, W.S.

Agents for the Respondents—Dalmahoy & Cowan, W.S.

Saturday, June 24.

SECOND DIVISION.

MORRISON *v.* WALKER.

Process—Reponing—Appeal—Sheriff—Sheriff-court Act 1853, § 16. After a proof had been led in the Sheriff-court, the Sheriff-Substitute appointed the case to be enrolled in the Debate Roll. No appearance was made for the pursuer at the debate, and on the defender's motion the Sheriff-Substitute *held* the pursuer as confessed, and assoilzied the defender. The pursuer failed to apply to the Sheriff to be reponed within seven days, under the 16th section of the Act, and appealed to the Court of Session. The Court reponed him on payment of £10, 10s. of expenses, but expressed dissatisfaction with the irregularity of the procedure, and indicated opinions that it was not contemplated by the Sheriff-court Act that cases should be brought up for review from the Inferior Court *causa non cognita.*

This was an appeal from the Sheriff-court of Lanark.

The Sheriff-Substitute (MURRAY) pronounced the following interlocutors:—

"*Glasgow, 25th March* 1871.—On defender's craving, no appearance having been made for the pursuer at the debate yesterday—Holds pursuer confessed as not insisting in this action, and assoilzies the defender from the conclusions thereof: Finds the pursuer liable in expenses; allows, &c."

"*Glasgow, 30th May* 1871.—Approves of the auditor's report on the defender's account of expenses, and decerns against the pursuer for the taxed amount thereof."

The pursuer appealed.

PATTISON for him.

W. A. BROWN for respondent.

LORD JUSTICE-CLERK—I think the proper course is to repone the appellant on condition of payment of £10, 10s. of expenses. I have considerable difficulty on the competency of doing so in the present state of the case, but as there appears to be no distinct rule of process, and no statutory provision against our reponing a party who has not taken the usual course of going to the Sheriff, I think that we ought to grant his application. I do not see any objection to our hearing the parties on the proof, and so acting as a court of original jurisdiction, after the proof has been led and the case is ready for judgment. To send the case back to the Sheriff-court would be putting a penalty on the respondent.

LORD NEAVES doubted whether the proper course would not be to remit the case to the Sheriff-court on condition of the appellant paying ex-