

2, 4, 6, 7, 8, and 9. As regards the whole of them they seem to refer to public documents said to be in existence in the United States of America, and more of them appear to be books of records, while those that are not so are instruments *in publica custodia*. Now, it appears to me that the proper course to follow with reference to all those documents is to call the custodiers as witnesses. In the case of a register, let the registrar be called and let him be examined with reference to any entries which may be in the books under his charge. If the entry be short it may be taken down *in toto* as part of his deposition, and by his oath it would then be made good evidence. There would then be no examination of him as a haver, but he would be examined simply as a witness in the cause. Further, as to the other writs they appear to me to stand in very much the same position. They are probates of wills and documents of that class which clearly cannot be allowed out of the country; but all that the witness has to do is to exhibit the originals, and if he is unable to do this, copies may be furnished and excerpts taken therefrom, and such excerpts when sworn to will also become good evidence in the cause. What I have said applies to all the numbers which are objected to, and I can see no need in having the parties examined as havers and also as witnesses, thus doing twice over what requires only to be done once.

I am therefore for giving effect to these objections, and rejecting all these articles of the specification.

LORD MURE concurred.

LORD SHAND—The result of your Lordship's judgment is that Sir James Maitland will have no difficulty in getting all that he really desires. The substance of the document is not objected to; it is merely the form in which their contents are to be made available. In that view of the matter my opinion is of little consequence. I think, however, that a somewhat different course might have been followed from that proposed by your Lordship, when in a litigation in which proof has to be taken both in this country and abroad, either party is entitled to have a diligence to recover documents apart from and in addition to a commission to examine witnesses. If that is the rule when proceedings are to go on in this country, I cannot see that there is any difference because some of the documents happen to be abroad. I think that Sir James Maitland is entitled both to a diligence and a commission to examine witnesses. Two specifications are before us, and I wish that we had so settled their terms, trusting to the Foreign Courts to give effect to the call, as to have been able to save the parties the expense of a discussion in America. The mere fact that interrogatories are to be adjusted does not appear to me to be any sufficient reason for refusing the diligence in America. I am therefore of opinion that this diligence should be granted, with the exception of those articles which call for public documents of State. As regards the probates and extracts of wills, I can see no reason for refusing them and am therefore for granting all the articles of this specification with the exception which I have just referred to.

LORD ADAM—I concur in the opinion expressed

by your Lordship. In the execution of a diligence there is a well known distinction between productions and exhibits, or in other words, between documents put in process, and those which can only be seen. Now, this is not one of those cases in which we can grant warrant for productions in any proper sense; we can only grant leave that exhibits may be made; and in these circumstances it appears to me that it would be quite wrong to grant a diligence for the recovery of documents which from their very nature cannot be produced in process.

The Court granted diligence for the recovery of documents relating to real property, mines, letters-patent, &c., in which the Hon. R. Maitland was interested; files of New York newspapers for 1772, certificates, warrants, &c., relating to the *status* of the Hon. R. Maitland; writings and documents, including letters to or by him tending to show where he was domiciled at his death and prior thereto; and refused diligence to recover Acts of the Local Legislature, wills and probates of wills, records of New York courts of law, registers of New York churches, and marriage registers.

Counsel for Sir James Maitland—Mackintosh—Pearson. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Major Maitland—J. P. B. Robertson—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Friday, March 20.

## FIRST DIVISION.

[Lord Adam, Ordinary.]

MAGISTRATES OF GLASGOW v. THE POLICE  
COMMISSIONERS OF THE BURGH OF  
HILLHEAD.

Road—Roads and Bridges (Scotland) Act 1878, secs. 37, 38, and 88—Bridge Locally Situated in Two Burghs—Outside Traffic.

Held (diss. Lord President) that the provisions of the Roads and Bridges (Scotland) Act 1878, sec. 88, apply to the case of bridges locally situated partly in one county or burgh and partly in another, which accommodate traffic coming from adjoining counties or burghs.

Opinion (per Lord President) that sec. 88 only applies to bridges situated wholly within one county or burgh, and that secs. 37 and 38 deal with bridges which are not situated within one county or burgh.

Observations on the effect of the Act 13 and 14 Vict. cap. 21 (an Act for shortening the language in Acts of Parliament), sec. 4.

By the Roads and Bridges (Scotland) Act 1878, it is, by sec. 37, *inter alia*, provided (subsection 1, d), that "Where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and, if need be, of rebuilding, the same shall, failing agreement, be a charge equally against the trustees of the county or counties and local authority or authorities of the burgh or

burghs within which it is partly situated. The management of the bridge shall, failing agreement, be vested in a committee (hereinafter called a joint bridge committee) to be appointed by the trustees or local authorities chargeable with the cost of maintenance and rebuilding."

The river Kelvin, which forms the boundary between the city of Glasgow and the burgh of Hillhead, is crossed by two bridges, the eastern extremities of both being situated within the burgh of Glasgow, and the western within the burgh of Hillhead. In November 1883 a joint bridge committee was appointed in terms of the above-quoted section.

By the 88th section of the statute it is provided:—"Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of managing, maintaining, repairing, and, if need be, rebuilding such bridges, and of paying the debt affecting, or which may affect, the same, should be imposed upon the county or burgh within which they are so situated: Be it enacted, that in respect of such bridges the following provisions shall have effect:—(1) The trustees of counties and burgh authorities may agree that any such bridge accommodates other traffic than that of the county or burgh in which it is situate, and may agree as to the proportions in which the debt (if any), and the cost of maintenance, and, if need be, of rebuilding such bridge, shall be borne and defrayed by the county or counties and burgh or burghs, to which it is common; and such agreement, when confirmed by a resolution of the trustees in general meeting, and of the burgh authorities, shall have the same force and effect as an order by the Secretary of State, as provided hereinafter: (2) It shall be lawful for the county road clerk, or clerk of supply, of any county, or for the town-clerk or clerk of any burgh, to apply to the Secretary of State to determine that any bridge locally situated within a county or burgh in respect of its accommodating other traffic than that of such county or burgh only, shall be deemed to belong in common to the county or counties, and burgh or burghs, to be named in his determination: (3) Upon such application being presented to the Secretary of State, he may, if he shall think fit, by any writing under his hand, appoint any two persons, as commissioners, to institute a local inquiry as to the circumstances of the case, and after hearing all parties interested, to report thereon to the Secretary of State, and for the purposes of such inquiry the commissioners shall have power, after such public notice as they may think sufficient, to examine witnesses on oath, and to call for such documents as they may consider necessary, and to do all such matters and things as may seem expedient to them for the purposes of inquiry: (4) If the commissioners are of opinion that the Secretary of State should determine that the burden of managing, maintaining, repairing, and, if need be, rebuilding the bridge mentioned in the application, and of paying the debt affecting or which may affect the same, should not be borne wholly by the county or burgh within which the

same is locally situated, they shall prepare and transmit along with their report the draft of the determination which they recommend that the Secretary of State should make, setting forth therein the proportions in which such burden should be borne by the county or counties, or part or parts, or district or districts, of such county or counties, and by the burgh or burghs named in the determination: (5) The Secretary of State after such further inquiry, if any, as he shall deem necessary, may approve of the draft submitted with or without alterations, and any determination made by him, under his hand and seal, shall have the same effect as if it were contained in this Act: Provided always, that such determination shall be laid before both Houses of Parliament, and if either House of Parliament, within forty days after the same has been so laid before it, resolve that such determination ought not to take effect, the same shall be of no effect (without prejudice to the making of any new determination), but otherwise shall come into operation at the expiration of the said forty days, or any later date mentioned in the determination."

In January 1884 the clerk to the Commissioners of Police of the burgh of Hillhead presented to the Secretary of State for the Home Department, an application in terms of this section, craving the Secretary of State to determine "(first) that the bridge over the river Kelvin on the Great Western Road, which is situated partly within the burgh of Hillhead and partly within the City of Glasgow, in respect of its accommodating other traffic than that of the said city and burgh, should be deemed to belong in common to the said city and burgh, and to the county of the Lower Ward of Lanarkshire, or to such other county or counties, or burgh or burghs, as might be named in the determination; and (second) that the bridge over the said river on the Woodlands Road, which is situated partly within the said city and partly within the said burgh, should in respect of its accommodating other traffic than that of the said city and burgh, be deemed to belong in common to the said city and burgh, to the burgh of Partick, and to the county of the Lower Ward of Lanarkshire, or to such other county or counties as might be named in the said determination."

The Secretary of State accordingly appointed two commissioners to make inquiries as to the bridges, in terms of the 88th section.

This was an action at the instance of the Magistrates of Glasgow, acting under the Glasgow Police Act, against (1) the Police Commissioners of the burgh of Hillhead and their clerk, (2) Sir William Harcourt, Secretary of State for the Home Department, (3) Henry Johnston, advocate, Edinburgh, and James Wyllie Guild, accountant, Glasgow, the commissioners appointed by the Secretary of State, to have it found and declared that the bridges above mentioned "are not bridges which accommodate or may accommodate the traffic, not only of the said burghs, but also of the adjoining county, or of other counties and burgh or burghs in Scotland, with the terms and intent of the 88th section of The Roads and Bridges (Scotland) Act, 1878, and that the defenders are not entitled to institute or follow forth an inquiry with respect to the said bridges, or to report the result of said inquiry, or to issue any determination in respect thereof: And the defen-

ders ought and should be interdicted, prohibited, and discharged, by decree foresaid, both *ad interim* and perpetually, in manner following.—That is to say, the defenders the said Commissioners of Police of the burgh of Hillhead and the defender James Muirhead, as clerk to and representing the said defenders, from prosecuting, adducing evidence, or otherwise proceeding in any inquiry instituted or to be instituted under and in terms of the said section with respect to the said bridges; the defenders Henry Johnston and James Wyllie Guild from hearing evidence, issuing a report, or otherwise proceeding in the matter of such inquiry; and the defender the said Right Honourable Sir William Harcourt from considering, altering, or approving of any report made to him by the said commissioners under the said inquiry, and from issuing any determination with regard thereto."

The contention of the pursuers was that upon a sound construction of the 88th section of the statute, taken in connection with the 37th, the bridges in question being situated partly in one burgh and partly in another, did not fall within section 88.

The defenders maintained that section 88 did apply to the bridges in question.

The Lord Ordinary (ADAM) on 7th November 1884 assailed the defenders.

"*Opinion.*—By the 88th section of the Roads and Bridges (Scotland) Act 1878 it is provided, that 'whereas there are or may be bridges in Scotland which accommodate, or may accommodate the traffic, not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties, and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of managing, maintaining, repairing, and if need be rebuilding such bridges, and of paying the debt affecting, or which may affect the same, should be imposed upon the county or burgh within which they are so situated;' and it is enacted that failing agreement, application may be made to the Secretary of State to determine that any bridge locally situated within a county or burgh in respect of its accommodating other traffic than that of such county or burgh only shall be deemed to belong in common to the county or counties, and burgh or burghs, to be named in his determination, and that upon such application being presented to the Secretary of State, he might, if he should think fit, appoint any two persons as commissioners to inquire into the circumstances of the case, and report, and that if the commissioners should be of opinion that the Secretary of State should determine that the burden of managing, maintaining, &c., the bridge mentioned in the application should not be borne wholly by the county or burgh within which the same is locally situated, they should transmit, along with their report the draft of the determination which they recommend the Secretary of State should make, setting forth therein the proportions in which such burden should be borne by the county or counties, or part or parts, or district or districts, of such county or counties, or by the burgh or burghs named in the determination, and that the Secretary of State, after such farther inquiry as he should deem necessary, might approve of the draft submitted, with or without alterations; and

it is further declared that any determination made by him should have the same effect as if contained in the Act of Parliament.

"The question in this case is, whether two bridges across the river Kelvin fall within the provisions of the 88th section of the statute? The Kelvin forms the boundary between Glasgow and Hillhead—Glasgow lying on the east bank, and Hillhead on the west. The bridges, therefore, are locally situated partly in the burgh of Glasgow and partly in the burgh of Hillhead.

"It is maintained, on the part of the burgh of Glasgow, that the provisions of the 88th section apply only where a bridge is situated wholly within a particular county or burgh, and not where a bridge is locally situated partly in one county and partly in another, or where, as in this case, it is situated partly in one burgh and partly in another, which case they say is otherwise provided for in the Act.

"Now, it must be assumed for the purposes of this case that the bridges in question do or may accommodate the traffic, not only of the burghs within which they are locally situated, but also of the adjoining county and burgh or burghs; in this case it is suggested that they accommodate the traffic of the Lower Ward of Lanarkshire and of the burgh of Partick.

"There can be no doubt that the policy of the Act is that where a bridge accommodates, in addition to its own local traffic, the traffic of other counties or burghs, such other counties or burghs should contribute to the support of such bridge. It can make no difference as regards such other counties or burghs that the bridge in question is locally situated in more than one county or burgh. In this case, for example, the accommodation afforded by the bridges in question to the traffic of the Lower Ward of Lanarkshire, or to the burgh of Partick, is neither greater nor less than if the bridges had been wholly situated either in Glasgow or Hillhead, and it is not apparent why the Lower Ward of Lanarkshire or burgh of Partick should escape from the consequent obligation to contribute to the support of the bridges because of the accident that they happen to be situated partly in Glasgow and partly in Hillhead.

"I think, therefore, that the 88th section of the Act should be construed so as to give effect to the policy of the Act, if it will fairly bear such construction.

"Now, the bridges to which the 88th section applies are bridges which are described as accommodating the traffic not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties or burgh or burghs. That is to say, the 88th section applies to a bridge which accommodates the traffic not only of the county in which it is situated, or of the counties in which it is situated, or of the burgh in which it is situated, or of the burghs in which it is situated, but also of the adjoining county or burgh,—that is to say, it applies to a bridge situated in more than one county, or in more than one burgh, which is the case here. If this be not the meaning of the Act, I do not see why the words 'counties' and 'burghs' should have been inserted, because if the pursuers' contention be right—that the Act applies only to bridges wholly situated in one county or in one

burgh, then the words 'county' or 'burgh' would have been apt and sufficient to express the intention of the Legislature, and the words 'counties' and 'burghs' become superfluous and without meaning. But if a meaning can be given to these words, in accordance, as I think, with the policy of the Act, I think it ought to be so given, and I am accordingly of opinion that the provisions of the 88th section, were not intended to be limited only to bridges locally situated wholly in one county or burgh.

"But it is said that in the remaining part of the 88th section, which contains the provisions by which it is to be determined whether any such bridges should be held to belong in common to any county or counties and burgh or burghs, and the proportions in which the burden of supporting, &c., them should be borne are to be ascertained, such bridges are always described as being situated in a 'county' or 'burgh,' and never as in more than one county or burgh. That appears to be the fact, but such bridges may be described, though perhaps not very accurately, as situated in a county or burgh, although they may not be wholly situated in such county or burgh. But if I am right in thinking that the preamble of the section shews that the section was intended to apply to bridges whether situated wholly or partly in one county or burgh, I think these words may be fairly read so as to harmonise with the preamble of the section, and to give effect to the policy of the Act.

"I was further referred to the 37th section of the statute (subsection 1, *d*), which it was maintained regulated the case of a bridge not situated wholly within one county or burgh, and provided that the cost of maintaining the bridge should be charged equally on the county or counties or burgh or burghs within which it was partly situated. It appears to me, however, that that clause does not refer to the case in question, in which other counties or burghs which the Act says ought also to bear a share of the burden are concerned.

"The peculiarity, however, of this case is that it is not the county or burgh whose traffic is said to be accommodated by the bridges which are objecting to the proposed proceedings, but the burgh of Glasgow, in which the bridges are, in part at least, locally situated. It does not at first sight appear what interest that burgh has in objecting to other counties and burghs being brought in to contribute to the expense of maintaining the bridges; but it was explained that it was in the power of the Secretary of State to determine under the 88th section, without limit, what proportion of the cost Glasgow should in future pay, and that their proportion might possibly or probably be fixed at more than the one-half of the cost which they presently pay. That being so, I think that the pursuers, the burgh of Glasgow, have a title and interest to sue this action, but I think that the action is not well founded on the merits, and that the defenders are entitled to be assoilzied, with expenses."

The pursuers reclaimed. The arguments on both sides fully appear from the opinions of the Court.

The defenders, in addition to the argument submitted in the Outer House, referred to the Statute 13 and 14 Vict. cap. 21, sec. 4, which provides—"Be it enacted, that in all Acts words

importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided."

At advising—

LORD MURE—The object of this action is to have the defenders interdicted from carrying out an inquiry appointed to be made by the Secretary of State for the Home Department, under an order or instrument, as it is called, purporting to be issued under the provisions of the 88th section of the Roads and Bridges Scotland Act 1878 (41 and 42 Vict. c. 51).

The circumstances under which that instrument was issued were these: The town of Glasgow is separated from the burgh of Hillhead by the river Kelvin, and the traffic between the places is carried on by means of two bridges laid across that river, and which are thus situated partly in the town of Glasgow and partly in the burgh of Hillhead. But these bridges, besides accommodating the traffic of the two burghs, are alleged to accommodate a large and increasing amount of traffic from other places, viz., from the lower ward of the county of Lanark, lying beyond the boundaries of the burghs, and also from the neighbouring burgh of Partick.

This increase of traffic appears to have rendered it necessary or desirable to have an enlargement of one of these bridges. With that view, accordingly, and in order to adjust the proportion in which the expense of this enlargement should be borne by the two burghs, and by the portion of the county of Lanark, from which this increase of traffic comes, an application was some time ago made by the Commissioners for the Burgh of Hillhead to the Secretary of State requesting him to take the matter under consideration in terms of the 88th section of the statute, and to issue a commission to inquire and report upon the subject with a view to enable him to determine whether and to what extent the prayer of the application should be granted. A commission to that effect has accordingly been issued by the Secretary of State in favour of the two defenders; and it is against the carrying out of this inquiry that the present action has been brought, upon the ground that the powers given to the Secretary of State under the 88th section of the statute do not extend to the bridges of the description here in question, which are situated partly within the town of Glasgow and partly within the burgh of Hillhead. And the pursuers further maintain that the expense of building or maintaining bridges so situated is regulated by the 37th and not the 88th section of the statute. The Lord Ordinary has repelled these pleas, and assoilzied the defenders from the conclusions of the action. The case is attended with difficulty, but after full consideration I have come to the same result as that at which the Lord Ordinary has arrived, and upon substantially the same grounds as those which he has explained in his opinion, to which I have little to add.

With regard to what his Lordship describes as the policy of the Act, or rather the 88th section of the Act, it humbly appears to me that the circumstances under which this application was made to the Secretary of State, as explained in the record, and apart from the difficulty which

arises from the bridge being situated partly in one burgh and partly in another, are clearly of a description which bring the case within the express words of what has been called the preamble of that section. The words of the preamble are:—"Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties and burgh or burghs, or one or more of them, and it is not reasonable that the whole burden of managing, maintaining, repairing, and, if need be, rebuilding such bridges, and of paying the debt affecting or which may affect the same, should be imposed on the county or burgh within which they are so situated." And the allegations in the record are, that the bridges in question not only accommodate the traffic of the burgh of Glasgow and Hillhead, but also an increasing traffic from the adjoining Lower Ward of the county of Lanark, and from the burgh of Partick.

It must therefore, I think, be assumed, in disposing of the question here raised, that in so far as regards the traffic accommodated by this bridge, there is a traffic coming from outwith the burghs, and crossing this bridge, which is sufficient to call for the interposition of the Secretary of State to enable him to apply the remedy, if in his opinion necessary, which the statute provides for such a case.

The 37th section, however, on which the pursuers found, does not, as I apprehend, provide any remedy for such a state of matters as are set forth by the defenders, or as those specified in the 88th section of the Act. It deals, no doubt, with the expense of bridges not wholly situated within one county or one burgh, and provides that the expense of maintaining or rebuilding such bridges shall be a charge against the trustees of the county or counties, or the local authority of the burgh or burghs, within which they are partly situated. But this provision plainly relates solely to the ordinary expenses of maintaining or rebuilding bridges for the ordinary local traffic of the district, and gives no power to the local road trustees or to the local burgh authorities to maintain or enlarge or rebuild a bridge which is sufficient for the local traffic, in order the better to accommodate through traffic coming from a distance which uses the bridge, and still less does it give any power to assess the districts from which that traffic comes for a share of the expenses thereby occasioned. With respect to all this the 37th section makes no provision, so that unless a remedy for the state of matters complained of is to be found within the special provisions of the 88th section, it is clear that, in so far as this Act of Parliament is concerned, the injustice or inconvenience in question must in the present case remain unredressed.

Now, it is not, I think, reasonable to suppose that from this 88th section, the general policy of which is plainly to provide a remedy in all such cases, the Legislature would intentionally exclude bridges accommodating such external traffic as is there specially provided for from the operation of the remedy there prescribed, merely because one abutment of the bridge was founded on the Glasgow side of the river, and the other on the Hillhead side; and I am unable to come

to the conclusion that the words used necessarily do so. And if they do not, I agree with the Lord Ordinary that the section ought, if possible, to be so construed as to allow the special remedy to be given effect to in every case from which it is not expressly excluded, and to which it may, on a fair construction, be held to apply.

Now, the preamble of the section is, I conceive, broad enough to cover such bridges. It deals with all bridges in Scotland accommodating what may be called external traffic—that is, traffic coming from a "county or counties," or "burgh or burghs," different from those in which the bridges may be locally situated. But beyond this qualification of the description of the traffic accommodated there is no limitation which I can find in the character of the bridges to which the special provisions may be applied. The bridges, as described in the preamble, may be situated in a "county or counties," or in a "burgh or burghs," and there is no other way that I am aware of in which a bridge can be said to be situated in "counties" or in "burghs"—that is, in more than one county or one burgh, than in such a case as that here in question, and of which there are, I believe, numerous instances where one end of the bridge rests on the one bank and the other on the other bank of the river, which constitutes the boundary between the counties or the burghs which it is intended to accommodate. And I do not think the omission to repeat the plural words "counties" and "burghs" in the latter part of the preamble can be held to do away with and restrict the very broad language of the earlier part of the section.

It is, however, said that the enacting words of the various sub-divisions of the section limit the expressions used in the preamble in material respects, and shew that the Legislature only meant to deal with bridges wholly situated in one county or in one burgh. I am unable to adopt that construction. The singular words "county" or "burgh" are, no doubt, used in several of these sub-divisions without the repetition of the words "counties" or "burghs" in the plural, as used in the preamble. But then these sub-divisions all bear to be enacted with reference to all the bridges mentioned in the preamble, which bears—"Be it enacted that in respect of such bridges the following provisions shall have effect." So that the enactments in the sub-divisions are thus made expressly applicable to all the bridges which had before been mentioned, and which, in the view I take of the words used, may be held to include all bridges of the description here in question.

I have only further to add, that I should have been disposed to come to this conclusion, as the Lord Ordinary has done, upon the terms of the 88th section as it stands. But when that section is read with reference to the provisions of the 4th section of the Act 13 and 14 Vict. c. 21, to which we were referred by the defenders, it appears to me that the construction is one which we are required to give effect to. For that Act provides that in all Acts words importing the singular number "shall be deemed and taken to include the plural, and the plural the singular," unless where the contrary is "expressly provided." And so reading the 88th section, the defenders are, I think, on that ground, also entitled to prevail.

LORD SHAND—I am of the opinion expressed by Lord Mure and by the Lord Ordinary in this case, and after the full exposition of the statute which Lord Mure has just now delivered I shall content myself with noticing one or two points which are undoubtedly of some importance.

It is, I think, quite a settled principle that the Court should so construe an Act of Parliament as to apply the remedy to the evil or mischief which it is the intention of the statute to meet, and accordingly, I think, in the first place, that it is of importance to ascertain what is the evil or mischief which section 88 of this Roads and Bridges Act was intended to provide against. It appears to me that the Legislature desired to provide a remedy for the case of a county or burgh, or counties or burghs, using a bridge not locally situated within that county or burgh, or counties or burghs, by sending over it a considerable traffic, thereby causing serious or substantial expense to the management, repair, or maintenance of the bridge while escaping all contribution thereto. The evil, in short, was the use of a bridge by what I may call outside traffic, which might extend to such an amount as to be almost the entire traffic crossing or using the bridge. That traffic might cause the entire tear and wear of the bridge, and yet the district which produced it might escape entirely any part of the cost of its management, repair, or maintenance. That is, I think, to be gathered from the opening part or preamble of section 88.

The evil is perhaps greater in the case of a bridge which is wholly within one county or burgh than in the case where a bridge is partly in one county and partly in another, or partly in a county and partly in a burgh, because it may indeed be very truly observed that where you have a bridge partly situated in one county or burgh and partly in another, you have the burden of expense so far mitigated, for it is provided by an earlier section of the statute, section 37, that the expenditure shall be provided by both burgh and county. But although the burden may be held to be limited in such cases as are there mentioned, it may remain untouched in many other cases, and in such a case as we have here, where the bridge is situated partly within one burgh and partly within another, and where outside traffic is taken over the bridge from both sides of it—by which I mean traffic not coming from either of the burghs, but coming from outside the burghs—which may be, and perhaps is, greater than that coming from either of the burghs themselves. Therefore I am driven to the conclusion that the evil which the Legislature intended to provide against—although it may be to a mitigated extent—exists all the same in this case.

If the reading of the statute contended for by the Magistrates of Glasgow be right, it would come to this, that counties on each side of these burghs would be entitled to use bridges of this kind for their traffic with an amount of tear and wear resulting which might in a great measure create the substantial expense of the management, repair, and maintenance of the bridge, and yet would entirely escape from any liability on that ground. I therefore think the Court should so construe this statute, if the language admits of it, as to avoid such a result. And taking it so, I am humbly of opinion that the language is

sufficient for that purpose. Looking to the language at the outset of the 88th section, "Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties and burgh or burghs, or one or more of them," if the reading contended for by the Magistrates of Glasgow in this case be right, I find myself utterly unable to see the use of the words "or counties" "or burghs" which occur in the preamble. If it was intended to limit the case in the way that is proposed, I think the language would have been "Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or burgh, as the case may be, within which they are locally situated." The words, "county or counties," "burgh or burghs," seem to be there expressly for the purpose of providing for cases in which there are bridges in more than one burgh or more than one county.

It is quite true that the language of the first and second parts of this preamble is not in the same terms, and it is owing to that circumstance that much of the difficulty in the present case has arisen, and on it the present argument mainly depends. I need not repeat the first part again, but the next part is in these terms,— "And it is not reasonable that the whole burden of managing, maintaining, repairing, and, if need be, rebuilding such bridges, and of paying the debt affecting, or which may affect the same, should be imposed upon the county or burgh within which they are so situated;" and it is said that because of these limiting terms, because the words "county or counties, or burgh or burghs" do not here occur, we are therefore to read the clause as limited to the case of bridges entirely within one county or one burgh. I cannot so read it. I agree with my brother Lord Mure in what he has said in regard to this argument. I think it is critical—I may almost say hypercritical—in dealing with a matter of this kind. It is somewhat curious that the clause proceeds in the negative form in which I have just read it, "and it is not reasonable that the burden of managing," and so on, "and of paying the debt," &c., "should be imposed upon the county or burgh within which they are so situated." But it appears to me that is just the same form of expression. The clause is just as well expressed as if it had proceeded by express enactment to say that as outside traffic causes tear and wear it is only reasonable that the adjoining county or counties, burgh or burghs, one or more of them, should bear a share of the expense. If that had been so expressed in the opening part of this preamble, I confess I could have no difficulty, notwithstanding the provisions of subsections 1, 2, 3, and 4, which speak of county and counties, and burgh or burghs.

If one puts the question to oneself, How would one have framed the section if one had wished to give effect to the interpretation put upon it by the Town Council of Glasgow? By a clumsy expression, reading in at every line throughout the section after the words "county or burgh" "or counties or burghs?" I think we may fairly take it that when framing the section the object was to avoid the repetition of that cumbrous and

roundabout form of expression from beginning to end of the section. And so taking the section, and giving it what I think is its fair meaning, thus giving the fullest effect to the remedy intended to be provided, I think the framers were right in shortening the language as much as it would reasonably bear, without making the provisions inapplicable to bridges situated in more than one county or burgh.

I agree with the other view stated by the Lord Ordinary, which would be quite sufficient supposing there was any difficulty in this part of the case relating to the singular and plural numbers. His Lordship says, and I think truly, that it is quite fair to say that this bridge is situated within each of these burghs. The provision, taking it in the limited way contended for by the Magistrates, is that it is not reasonable that the penalty should be imposed upon the county or burgh within which the bridge is situated—that it could not be imposed upon Glasgow or upon the burgh of Hillhead, in each of which it is situated—and if you take that to be the meaning, then the whole section can be consistently read as a section which will apply to every case of a bridge, whether it be situated entirely within one burgh or county, or situated in two burghs or counties, for with reference to each of these burghs or counties it could be predicated that it is situated within that burgh or county. The section does not provide that it shall apply only where a bridge is wholly situated in one county or burgh, and I am disposed to say that I think the effect of reading the section so is not to provide a remedy for the evil which the statute intended to provide against.

In regard to the 37th section, it is only necessary to observe that it has no relation whatever to outside traffic, that is, traffic coming from any county or burgh other than that in which the bridge is situated, but it is intended to provide only for a division of the expense of management, repairs, and maintenance as between the parties in whose burghs or counties, trust, or district the bridge is situated. The later section (the 88th) is the first and only section of the statute which introduces and deals with the subject of outside traffic, and provides that the district from which that traffic comes shall bear its share of the expense of maintaining the bridge used for that traffic.

But I have further to say, that I see no good answer to the argument that was founded upon the statute 13 Vict. cap. 21, sec. 4, the very purpose of which was to enable parties to shorten clauses in Acts of Parliament. The very object of that statute was to avoid cumbersome and clumsy forms of expression. The Magistrates of Glasgow seem here to desiderate the repetition of the plural of certain words over and over again at every line. The section of the Act in question runs thus—"In all Acts words embracing the singular shall be held to include and include the plural, unless the contrary as to number is expressly provided." Now, the language of this statute must apply to these words "county or burgh," and unless we can find that it is expressly provided under the Roads and Bridges Act that "county or burgh" is to be limited to the singular number, we must take it in the plural. When I look to find if there be any other provision in that statute that expressly says that the singular number shall not include the plural, I find none.

I find the word "county" and the word "burgh" used in the singular, and that is just what the statute contemplated. I can find nothing in the statute which will take away the effect of this Interpretation Act, which was passed to remove doubts and difficulties in such questions as the present.

Upon these grounds, as well as upon those stated by Lord Mure and the Lord Ordinary, I think that the judgment of the Lord Ordinary is sound, and that we should adhere to it.

LORD ADAM—I have all along, both here and in the Outer House, felt that this case was attended with difficulty. Since I made up my mind in the Outer House I have not heard anything to make me change the opinion I then formed. I have resolved to adhere to that opinion, and have nothing to add.

LORD PRESIDENT—I am very sorry that I cannot concur in the judgment now proposed. It appears to me that I am bound by the words of this statute to an opposite conclusion.

When this Act was passed it became very plain that there must be in many cases a division of turnpike roads between different counties where one turnpike road, for example, extended over two or more counties, and still was embraced in one trust; and it was equally plain that if upon the line of road embraced in any such trust there existed a stream as the boundary between the different counties, and a bridge crossed that stream, that would require to be provided for in some way. Now, there are two sections of the statute that apply directly to these difficulties—sections 37th and 38th. Section 37th begins by providing that "Where any trust . . . embraces a turnpike road which is not situated wholly within one county or burgh, the following provisions shall have effect." Now, I call particular attention to the terms that are here used as describing the subject-matter of the enactment, "a turnpike road which is not situated wholly within one county or burgh."

There are various subsections which deal with the manner in which that turnpike road is to be divided between the different counties. I do not pause to read these, because they do not bear upon the argument. But the subsection (d) of the first subsection of section 37 (for there are a great many subdivisions) has this particular enactment in regard to a bridge. The bridge which is dealt with is thus described,—"Where a bridge is not situated wholly within one county or burgh, the expense of maintaining, and if need be of rebuilding the same, shall, failing agreement, be a charge equally against the trustees of the county or counties, and local authority or authorities, of the burgh or burghs within which it is partly situated." There, again, you will observe that the subject-matter dealt with is described in language precisely corresponding to that which is used in regard to a turnpike road which is not situated wholly within one county or burgh.

Again, another part of this 37th section deals with the case where the Act has been adopted by one county or burgh but not by an adjoining county or burgh, and provides for the division of the road in that case.

There is under that part of the clause a sub-

section (d) which applies to such bridges, and there again the bridge is described, "where a bridge is not situated wholly within one county or burgh, the expense of maintaining, &c., shall be charged," &c.

Throughout this 37th section, therefore, you will observe the language always is,—whether it be applied to a road or bridge,—it is to be subject to division, and each is to be maintained partly by one trust and partly by another. The language adopted is invariably the same when the bridge is not situated wholly within one county or burgh, and the same when the road is not wholly within one county or burgh.

Then when we come to the 38th section we have corresponding language—"Where a bridge not at the commencement of this Act included in a turnpike road trust, is not situated wholly within one county or burgh," provision is made for the maintenance of it jointly. So that throughout these two sections we have quite definite and distinct language applied to what I may call the subject-matter of the section, turnpike roads and bridges, the expense of which falls to be divided, and they are always described as not situated wholly within one county or burgh.

Now, carrying that observation along with us to the consideration of the 88th section, which is the matter in hand, we find that section beginning with language which is certainly not well chosen, whatever else may be said of it. It is confused and, I think, ambiguous—"Whereas there are or may be bridges in Scotland which accommodate or may accommodate the traffic not only of the county or counties, or burgh or burghs, as the case may be, within which they are locally situated, but also of the adjoining county, or of other counties and burgh or burghs, or one or more of them." I should find the greatest possible difficulty under that part of the 88th section in saying that that general description embraced a thing so specifically and definitely dealt with in the earlier part of the statute as a bridge or a turnpike road not wholly situated within one county or burgh, if that had happened to come under section 88. I find in the earlier part of the statute very express and precise language used to describe the class of bridge with which we are dealing as not situated wholly within one county or burgh, and therefore upon this ground alone, without anything further, I should find it difficult to hold this class of bridge to be embraced in such general language as I have just read. But it rather appears to me that in the 88th section the statute is dealing with bridges which accommodate or may accommodate what Lord Shand has very well called "outside traffic,"—which are, speaking collectively, the whole bridges of the kind in Scotland, and that is the reason why there are so many alternations between singular and plural in that 88th section. As I said before, I think the language is ill chosen, but I think it is to be accounted for by the circumstance that it is not speaking of any particular bridge or class of bridge, but of all bridges generally which may possibly accommodate outside traffic, and therefore these alternatives are used.

But as the preamble proceeds it seems to me to become a great deal clearer, and so clear as to form a stronger argument in favour of the pursuers. It proceeds thus,—“And it is not reason-

able that the whole burden of managing, maintaining, repairing, and, if need be, rebuilding such bridges, and of paying the debt affecting or which may affect the same, should be imposed upon the county or burgh within which they are so situated." Now, that seems to me to contemplate that the relief to be given is relief to the county or burgh within which the bridge is so situated. The section provides for the division of the expense of maintaining the bridge because of its accommodating traffic that is within some other trust, and the relief that is to be given is relief to the county or burgh in which the bridge is situated. Now, the question which arises here, and which I cannot help suggesting in my own mind, is this, Does the bridge which is not situated wholly within one county or burgh (which, observe, is a statutory term) mean the same thing as a bridge which is situated within a county or burgh? They seem to me to be contradictory instead of identical. A bridge that is not situated in one county or burgh can hardly be the same thing as a bridge which is situated within a county or burgh.

But all this is made clearer to my mind when I come to the enacting clauses, or what I should call the enacting sub-sections.

By the first of these—"The trustees of counties or burgh authorities may agree that any such bridge accommodates other traffic than that of the county or burgh in which it is situate." Now, here again the description of the bridge is a bridge situated within a county or burgh, "and the cost of maintenance, and, if need be, of rebuilding such bridge, shall be borne and defrayed by the county or counties and burgh or burghs to which it is common." That is to say, it shall be defrayed partly by the county or the burgh within which it is situated, and partly by the county or burgh the traffic of which passes over it.

Then in the second sub-section—"It shall be lawful for the county road clerk or clerk of supply of any county, or for the town-clerk, or clerk of any burgh, to apply to the Secretary of State to determine that any bridge locally situated within a county or burgh, in respect of its accommodating other traffic than that of such county or burgh only, shall be deemed to belong in common to the county or counties and burgh or burghs to be named in his determination." Now, that seems to me to be a provision that a bridge which belongs to one county or burgh shall be made common to two or more counties or burghs, and I think if we take that sub-section alone it is really impossible to read it in any other way. It is not dealing with a bridge that is already common to one or more counties or burghs, but dealing with a bridge that belongs exclusively to one or more counties or burghs.

In the fourth sub-section it is provided, that "If the Commissioners are of opinion that the Secretary of State should determine that the burden of managing, maintaining, repairing, and, if need be, rebuilding the bridge mentioned in the application, and of paying the debt affecting or which may affect the same, should not be borne wholly by the county or burgh within which the same is locally situated, they shall prepare and transmit along with their report the draft of the determination which they recommend that the Secretary of State should make, setting forth therein the proportions in which such burden should be

borne by the county or counties, or part or parts, or district or districts, of such county or counties, and by the burgh or burghs named in the determination." Therefore it appears to me that the whole object of this 88th section is to provide that bridges situated wholly within one county or burgh shall nevertheless be dealt with as regards their maintenance and management in the same way as if they were not wholly situated within one county or burgh. That is to say, they are to be brought within the category of being not wholly situated within one county or burgh for the purpose of maintenance and administration. Those which *de facto* are not locally situated within one county or burgh have been already disposed of by the 37th and 38th sections of the statute, and the kinds which are dealt with in these sections are bridges which are situated wholly within one county or burgh, but are to be made common to two or more of such counties or burghs.

Now, it has been said that the question at issue may be solved by reference to the statute, which is called an Act for shortening the language contained in Acts of Parliament, and if the framers of this statute had that object in their view, I do not think they have been very successful. But it appears to me that the statute referred to has no application. This does not appear to me to be a case of singular and plural at all any more than a case of masculine and feminine. The question here is whether a bridge not wholly situated within one county or burgh is a bridge locally situated within one county or burgh? That is not a question of number. That is a question of two terms occurring in the same statute, and I put to myself the question whether these two terms mean the same thing, or whether one precludes the other, and I think it is utterly impossible to think that they can refer to the same thing. For these reasons I feel myself compelled to dissent from your Lordships' judgment.

The Court adhered.

Counsel for Pursuers and Reclaimers—J. P. B. Robertson—Lang. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders and Respondents—Mackintosh—Begg. Agents—Morton, Neilson, & Smart, W.S.

Friday, March 20.

## SECOND DIVISION.

### PEACOCK'S TRUSTEES v. PEACOCK AND OTHERS.

*Succession—Trust-Disposition and Settlement—Vesting—Disposal of Estate "in Event of the Death" of Beneficiary.*

A truster died leaving a trust-disposition and settlement, in which he directed his trustees, *inter alia*, to pay the residue of his estate to his lawful children who might be alive at his decease when his youngest child should attain the age of twenty-one, and to the issue of children predeceasing the period of payment, the income being meanwhile divided equally among the children or their issue, and with power to the trustees at their discretion to make advances out of the

estate, which were to be deducted from the shares of the child receiving the advances. There was no clause of survivorship. In a codicil, on the narrative that he had not provided for the disposal of his whole estate "in the event of the death of my children without leaving lawful issue," he directed his trustees in that event to pay the whole residue to his nephew, whom failing to the heirs of his nephew's body, equally among them. He was survived by one son, who died at the age of seventeen, unmarried and intestate. *Held*, on a sound construction of the deeds, that the estate vested in the son from the death of his father, and passed, capital and income, to the son's heirs in heritage or *in mobilibus* according to the character of the estate.

Peter Clark Peacock, wine merchant in Dalkeith, died on 26th July 1873, leaving a trust-disposition and settlement, and two relative codicils. His wife predeceased him, and he was survived by only one child, Thomas Storie Peacock, then only six years old. By his trust-settlement he conveyed to his trustees his whole estate which should belong to him at the time of his death in trust for (1) payment of all his just and lawful debts, and (2) payment of certain provisions to his wife, which lapsed by her predeceasing him. In the third place, he directed his trustees, *inter alia*, as follows:—"Thirdly, I direct that the residue of my said means and estate, heritable and moveable, hereby conveyed, shall be managed and preserved by my trustees for the use and behoof of the lawful children of my body living at my decease, or born thereafter, and the rents, interests, dividends, and annual proceeds of my said estate shall be paid by my trustees for and towards the maintenance and education of my said children until my youngest child shall have, in the case of a son, attained the age of twenty-one years complete, or in the case of a daughter, attained that age or be married, whichever of these events shall first happen: And thereafter, and so long as my wife, the said Jane Watson Storie or Peacock, shall enjoy her said annuity, my trustees shall pay over to my said children the free income of the residue of my said estate, and that equally between or among them, share and share alike, if there shall be more than one, and to the lawful issue, share and share alike, of any of them who may have married and predeceased before the time when the said revenue shall become payable, the share of the said income which would have been payable to their predeceasing parent: And I direct my trustees to pay, assign, and dispose the free residue of my said means and effects, heritable and moveable, above conveyed, to and in favour of the lawful children of my body who may be alive at my decease, should my said wife have predeceased me, or at the decease of my said wife should she survive me, when the youngest of them, if sons, shall attain the age of twenty-one years complete, and if daughters, shall attain that age or be married, whichever event shall first happen, and that equally between and among them as above provided, with respect to the disposal of the income of my said estate; declaring that if any of my said children shall die before their share of the said residue of my estate becomes payable to them, leaving lawful issue, such issue shall, share