Tuesday, February 26.

SECOND DIVISION.

[Sheriff of Ayrshire.

YEATS' TRUSTEES (BELLFIELD COLLIERY COMPANY) *v.* THE GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Railway—Undue Preference—Difference of Rates over same Portion of the Line of Railway—Railway Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 33), *sec.* 83.

The 83d section of the Railways Consolidation (Scotland) Act 1845 provided for the alteration or variation of such tolls as a railway company might by special Act be entitled to charge, "provided that all such tolls be at all times charged equally to all persons, and after the same rate . . . in respect of all passengers and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances." . . .

A railway company charged a certain rate per mile, and every part of a mile was accounted a whole mile. *Held* that each mile was to be considered as a unit in determining the "portion" of the railway over which the traffic of two different coalmasters passed, just as it was considered a unit in fixing the charges which the railway company were entitled to make in respect of such traffic, and that where the sidings of two collieries joined the main line at different distances from the terminus of their respective journeys, but were within the same mile from it, the traffic of both passed over "the same portion of the railway" within the meaning of the 83d section of the statute.

The Bellfield Colliery siding joined the down line of the railway to Troon. The Wellington Colliery siding joined the up line of the railway at a point 415 yards nearer Troon than the Bellfield siding. Wellington Colliery traffic for Troon was carried back by the railway company to cross-over points in the immediate vicinity of the Bellfield siding. Wellington traffic was, however, invariably, and Bellfield traffic usually, carried to a siding beyond Hurlford station, and there marshalled for despatch to Troon. Both collieries were within the same mile from Troon. The railway company charged a certain rate per mile, and every part of a mile was accounted a whole mile.

In an action at the instance of the Bellfield Colliery proprietors against the railway company on the ground of undue preference in the rates charged for the Wellington traffic, the defenders contended that their contract was to carry the traffic of each colliery to Troon from the respective points where it reached their railway, and that inasmuch as the pursuers' siding joined the railway 415 yards further from Troon than the Wellington siding, their traffic was not carried "over the same portion of the line of railway." *Held* that the traffic of the two collieries was carried "over the same portion" of the railway.

Opinion that the traffic of both collieries must be viewed as carried to Troon from Hurlford station, and therefore that it passed "over the same portion" of railway.

The Railway Clauses Consolidation (Scotland) Act 1845, sec. 83, provides—"And whereas it is expedient that the company should be enabled to vary the tolls upon the railway so as to accommodate them to the circumstances of the traffic, but that such power of varying should not be used for the purpose of prejudicing or favouring particular parties, or for the purpose of collusively and unfairly creating a monopoly either in the hands of the company or of particular parties, it shall be lawful therefore for the company, subject to the provisions and limitations herein, and in the special Act contained, from time to time to alter or vary the tolls by the special Act authorised to be taken either upon the whole or upon any particular portions of the railway as they shall think fit: Provided that all such tolls be at all times charged equally to all persons, and after the same rate, whether *per* ton, *per* mile, or otherwise, in respect of all passengers, and of all goods or carriages of the same description, and conveyed or propelled by a like carriage or engine, passing only over the same portion of the line of railway under the same circumstances; and no reduction or advance in any such tolls shall be made either directly or indirectly in favour of or against any particular company or person travelling upon or using the railway."

Bellfield Colliery and Wellington Colliery were situated on either side of the Glasgow and South-Western Railway in the immediate vicinity of Hurlford station. Bellfield Colliery, which was carried on by the testamentary trustees of the deceased Robert Yeats of Kilmarnock, possessed a siding which connected with the down line to Troon exactly at Hurlford station. Wellington Colliery on the other side of the line was worked by Allan Gilmour, coalmaster, Kilmarnock, and was connected with the up line from Troon by a siding which was 415 yards distant from Hurlford station, and therefore so much nearer Troon than the siding of the Bellfield Colliery. As, however, Wellington Colliery joined the up line, traffic from that colliery for Troon had to be carried back to cross-over points a few yards on the other side of Hurlford station, where it was marshalled. Traffic from Bellfield Colliery was sometimes carried on to Troon from the colliery siding on the down line, but it was usually carried back past Hurlford station and made up for Troon at the same siding where the Wellington traffic was marshalled. Both collieries were within the same mile—that is to say, more than eleven miles and less than twelve miles—from Troon.

The railway company had treated the two collieries as each twelve miles from Troon, the rate for carriage of coal and dross being 1s. 3d. per ton.

In May 1875 an agreement was entered into between the railway company, of the first part, and certain coalmasters, including Allan Gilmour, and Robert Yeats & Company, Grange Colliery, and Robert Yeats and Others, individual partners

of that company. It was agreed, *inter alia*, that the first party should carry the coal of the second parties at certain specified rates per ton per mile, and it was thus provided:—"In coal or dross . . . fractions of tons to be charged as a whole ton, and fractions of miles as a whole mile." It was further provided that if the railway company should charge any other trader lower rates for carrying coal to the same terminus than those stipulated, the second parties should be entitled to a corresponding reduction. In the case of *Mackinnon* v. *Glasgow and South-Western Railway Company*, July 15, 1885, 12 R. 1309, *aff.* June 23, 1886, 13 R. (H. of L.) 89, the pursuer, the trustee in the sequestration of Mr Gilmour of the Wellington Colliery, founded on the above agreement. It was decided that the railway company, in consequence of rates charged to traders outside of the agreement, were bound to carry coal and dross from Wellington Pit to Troon at a reduction of 4½d. on the rate of 1s. 3d. per ton.

The trustees of the deceased Robert Yeats, who carried on the Bellfield Colliery, raised the present action in September 1886 in the Sheriff Court at Kilmarnock against the railway company. They sued for the sum of £190, 0s. 3d., which was subsequently restricted by agreement to £178, the amount of alleged overcharge by the defenders for the carriage of coals in violation of the agreement of 1875, and of the Railways Clauses Consolidation (Scotland) Act 1845, sec. 83.

The pursuers averred that with a view to meet the opposition created by the construction of a rival line or to mitigate the decrease of traffic which would thereby be caused to their railway, the defenders in August 1884 issued a table of rates for collieries situated on the North British Railway in Lanarkshire, whereby they agreed to carry, and for the period from 25th August 1884 to 31st January 1885 (both dates inclusive) carried, coals from these collieries to Ardrossan, Irvine, Troon, and Ayr, at rates considerably lower than those stipulated in the said agreement, having regard to the respective distances. A corresponding reduction to said rates for the pursuers would entitle them to have their coals carried from Bellfield Colliery to Troon—a distance of twelve miles—at 4½d. per ton less than the rates they have been charged by the defenders and have paid to them. The pursuers had been charged by the defenders, and had paid carriage to them to Troon, from said 25th August 1884 till 17th August 1885, upon 10,134 tons, 2 cwts. of coals, at the rate of 1s. 3d. per ton, from said Bellfield Colliery, and the overcharge thereupon, at 4½d. per ton, amounts to £190, 0s. 3d.

The pursuers founded on the case of *Mackinnon* above mentioned. They further averred—"The coals and dross from the pursuers' pit and from the said Wellington pit are of the same description, and are conveyed and propelled by like carriages and engines, and pass only over the same portion of the defenders' line of railway—to wit, from Hurlford station to Troon harbour—under the same circumstances. The pursuers were therefore entitled to be charged equally with the said Wellington pit, and after the same rate per ton per mile. The defenders, however, had been charging the pursuers, between the 25th day of August 1884 and the 17th day of August 1885, the rate of 1s. 3d. per ton for the conveyance of coal and dross from Hurlford station to Troon harbour, which is 4½d. per ton more than the rate they were bound under the said agreement to charge to the said Allan Gilmour.

The pursuers pleaded, *inter alia*, that the defenders were bound by the agreement, and "(4) The defenders having charged the pursuers a higher rate than they had agreed to charge another coalmaster for the carriage of goods of the same description, conveyed and propelled by like carriages and engines, and passing only over the same portion of defenders' line of railway under the same circumstances, have violated the Railways Clauses Consolidation (Scotland) Act 1845, sec. 83, and are bound to repay to the pursuers the amount of the overcharge."

The defenders pleaded—"(1) No title to sue. (5/[3]) No violation of the Railways Clauses Consolidation Act 1845, sec. 83, having been committed by the defenders, the action, so far as founded thereon, is untenable."

The proof before the Sheriff-Substitute disclosed the custom and practice in marshalling of traffic from the respective pits as explained above.

On 29th June 1887 the Sheriff-Substitute (HALL) pronounced this interlocutor:—"Finds that the pursuers' author Robert Yeats was not as an individual a party to the agreement No. 5 of process, and that the pursuers have no title to sue under that agreement: Finds that Wellington pit, Portland Colliery, presently carried on by William Mackinnon, C.A., as trustee for behoof of the creditors of Allan Gilmour, a party to the said agreement, and the pursuers' Bellfield Colliery, both adjoin the main line of the defenders' railway in the immediate vicinity of Hurlford station: Finds that the junction of Bellfield Colliery siding with the said main line is at Hurlford station: Finds that the junction of Wellington pit siding with the said main line is 415 yards further on the way to Troon, but on the up-line, from which, in order to be conveyed to Troon, its traffic must be transferred to the down-line: Finds that the nearest point at which this can be done is the through crossing at Hurlford station: Finds that Wellington pit and Bellfield Colliery have hitherto been treated by the defenders as equidistant from Troon, the distance in each case being charged for as twelve miles, and the rate for the carriage of coal and dross being 1s. 3d. per ton: Finds that in its transmission to Troon the traffic from both collieries has its *terminus a quo* at Hurlford station, and passes over only the same portion of the defenders' line of railway: Finds that in virtue of the above-mentioned agreement, and in respect of the rates charged by the defenders to traders who are not parties to the said agreement, it has been decided that the defenders came under an obligation to carry coal and dross from Wellington pit to Troon during the period from 25th August 1884 to 17th August 1885, at a reduction of 4½d. on the said rate of 1s. 3d. per ton: Finds that between the said dates the pursuers paid to the defenders the said rate of 1s. 3d. per ton for the carriage of 9538 tons 2 cwts. of coal and dross from Bellfield colliery to Troon, conform to the receipts or discharged accounts Nos. 25 to 67 of process: Finds in law (1) that the case falls

under section 83 of the Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. c. 33); (2) that in conformity therewith the pursuers are entitled to the same reduction as that to which the proprietors of Wellington pit have been found entitled on the rate paid by them to the defenders for the carriage of their coal and dross from Bellfield colliery to Troon during the said period: Therefore repels the defences, and decerns against the defenders in terms of the prayer of the petition: Finds them liable in expenses, &c.

"*Note.*—The deceased Robert Yeats was a partner of Robert Yeats & Company, which firm and the individual partners thereof were parties to the agreement No 5 of process. Some four years after the agreement was concluded Robert Yeats in his individual capacity acquired the colliery of Bellfield which now belongs to the pursuers. Had he as an individual been a party to the agreement No. 5 of process, the pursuers in virtue of article 12 of that agreement would, even though Bellfield colliery was acquired subsequently, have succeeded to his rights and obligations under it. But in the opinion of the Sheriff-Substitute, Robert Yeats was a party to the agreement only as a partner of the firm of Robert Yeats & Company, which has no interest in Bellfield colliery, and article 12 must therefore be held not to apply to the case.

"The action is, however, laid not merely on the agreement No. 5 of process, but also on section 83 of the Railways Clauses Consolidation (Scotland) Act 1845. The object of that section is to prevent inequality in the imposition of rates by railway companies on traders whose traffic is of the same description, and passes only over the same portion of the line of railway under the same circumstances. It is at first sight a little startling that a claim under section 83 should be founded on the alleged partiality of the defenders in their treatment of the proprietors of Wellington pit, considering that the reduction on the standing rate which they have conceded, or in which they have been held liable to them, was forced upon them very much against their inclinations. On the other hand, there seems no reason to hold that if a railway company enters into agreements which, as judicially construed, result in an actual preference being given to one trader over another under such circumstances as would otherwise bring the case within section 83 of the Act, the application of that section is excluded by the mere fact that on the part of the railway company the preference was involuntary and undesigned. This, indeed, was scarcely maintained by the defenders who rather rested their opposition to the pursuers' claim on the alleged difference in the distance from Troon of Wellington pit and Bellfield Colliery respectfully.

"Now the truth is, that the point of connection of Bellfield Colliery siding with the line of the defenders' railway is exactly at Hurlford station, while that of Wellington pit is 415 yards nearer Kilmarnock, and therefore so much further on the way to Troon. As, however, Wellington pit siding connects with the up-line, while Kilmarnock can only be reached by the down-line, the traffic from Wellington pit must be carried back to the through crossing at Hurlford station, which is thus the starting point for both collieries on the journey to Troon. Some evidence was led as to the sidings and the mode of working them, which seems to the Sheriff-Substitute to be wholly irrelevant. It was also proved that in practice most of the Wellington pit traffic, as well as much of the Bellfield Colliery traffic, is carried back to the main sidings at the point marked G on the plan No. 8 of process, where mineral trains are made up or marshalled. But this arrangement, which is adopted merely for the defenders' own convenience in conducting their business at Hurlford station, may, the Sheriff-Substitute thinks, be dismissed from consideration. The real question is, whether, in view of the 415 yards which have to be traversed by the Wellington pit traffic before reaching Hurlford station, where it starts on its journey to Troon, that traffic has a different *terminus a quo*, and makes a different journey from the Bellfield Colliery traffic, which enters the defenders' line of railway exactly at Hurlford station. The Sheriff-Substitute has with some hesitation come to the conclusion that to answer this question in the affirmative would be to put too pedantically strict a construction on the words 'only over the same portion of the line of railway' in section 83. In dealing with that part of the clause which requires the circumstances to be the same, Lord Fullerton in the case of *Finnie* v. *Glasgow and South-Western Railway Company*, March 10, 1853, 15 D. 523, remarked that to exclude its application 'the difference of circumstance must be real and substantial, not evasive and pretended.' In like manner it seems to the Sheriff-Substitute that to deprive an aggrieved trader of his right to redress under section 83, the difference in the portions of the line of railway traversed must be substantial, which is not the case here. The decisions, so far as known to the Sheriff-Substitute, do not throw much light upon the question. In *Murray* v. *Glasgow and South-Western Railway Company*, November 29, 1883, 11 R. 205, and in one branch of the English case of *Denaby Main Colliery Company* v. *Manchester, Sheffield, and Lincolnshire Railway Company*, 1885, L.R., 2 App. Cas. 97, the complaint was that the railway company charged one trader as much as or more than another whose traffic was carried over a greater portion of their line of railway, so that it was assumed in the ground of action that the portions of the line traversed were not the same. In point of fact the difference in *Murray's* case was four miles, while the case of *Denaby Main Colliery Company* had reference to a group of collieries, forty-eight in number, the most remote members of which were separated from each other by a distance of fifteen miles. In another branch of *Denaby Main Colliery Company* the portion of the line of railway traversed was admittedly the same, and the controversy between the parties was whether there was or was not such a difference in the circumstances as to entitle one trader to a preference over another, without a violation of the section in the English Act corresponding with section 83. If, however, the fact that the traffic of one colliery has to be drawn 415 yards along the line to reach the starting point, while that of another has not, prevents the application of section 83 by making a different *terminus a quo* in the two cases, then it would seem that the identity of the *terminus ad quem* must also be destroyed if a similar distance

happens to be interposed between the loading berths to which the traffic is in each case conveyed. The Sheriff-Substitute rather thinks that this would not be to give fair play to a statutory provision which is of a favourable nature, and seems entitled to the utmost latitude of construction of which the language will admit. On the whole matter, therefore, though not without difficulty, the Sheriff-Substitute has decided in favour of the pursuers."

The defenders appealed to the Court of Session, and stated that they accepted the Sheriff-Substitute's view upon the agreement of 1875.

Argued for them — Their contract with the Wellington Coal Company must be kept in view in considering whether the 83d section of the statute applied. They had contracted to take the coal from the Wellington siding to Troon. The siding was 415 yards nearer Troon than the Bellfield siding, and so the Bellfield coal was not carried "over the same portion of the line of railway." The drawback to the cross-over points did not matter, as this was merely a convenience for the defenders. Delivery was not taken at Hurlford station, but at the Wellington siding. The Sheriff-Substitute proceeded on the view that the difference between the two pieces of line was too small to make a substantial difference of circumstances. But it had been decided that a large difference of distance was unnecessary if the traffic was sent to the same place, *Finnie* v. *Glasgow and South-Western Railway Company*, March 10, 1853, 15 D. 523, *per* Lord Fullerton, p. 531. Besides transit "over the same portion" was absolutely necessary, *Murray* v. *Glasgow and South-Western Railway Company*, March 29, 1883, 11 R. 205; *Denaby Main Colliery Company* v. *Manchester and Sheffield and Lincolnshire Railway Company*, 1885, L.R., 2 App. Cas. 97; *Evershed* v. *The London and North-Western Railway Company*, February 1877, 2 Q. B. Div. 254, and 3 Q. B. Div. 135, *aff.* July 1878, 3 App. Cas. 1029.

Argued for the pursuers—The defenders admitted that they had to draw back from Wellington siding to Hurlford, and so implied that the Wellington traffic started from the same terminus as the Bellfield traffic. It was not reasonable construction to argue that a few yards made all the difference as to traffic being "over the same portion" of the line. Probably no two traders could reach the railway company's line at equidistant points from the place of destination. The short distance between Wellington siding and Hurlford was not charged for, and was a matter considered in *Evershed's* case (*supra*). In *Murray's* case (*supra*) the goods of both traders passed over the same portion of the line, but one trader was at a distance of four miles along the line from the other. The *Denaby* case (*supra*) showed even greater disparities. For rating purposes the mile was the unit. All traders within the same mile were, for rating, taken in at the same point. They were, therefore, within the same portion of the railway, and for the purposes of the 83d section of the statute their goods were carried over the "same portion." The construction proposed by the defenders would make the statute inoperative.

At advising—

Lord Rutherfurd Clark—In this action the pursuers founded on an agreement with the defenders. The Sheriff held that they were not entitled to sue upon it. The pursuers acquiesced in that judgment, for the argument which was addressed to us was based entirely on the 83rd section of the Railway Clauses Act.

The pursuers and the Portland Colliery send coal by the defenders' railway to Troon. The pursuers complain that the defenders have charged lower rates to the Portland Colliery than they have charged to them. The defenders admit the difference of rates, but they maintain that the traffic of the pursuers and the traffic of the Portland Colliery are not carried "over the same portion of the line of railway," and therefore that they have not violated the provisions of the Act.

The coals of the pursuers are raised at the Bellfield pit, which is connected by a siding with the down line, along which the traffic to Troon is carried. The coals of the Portland Colliery are raised at the Wellington pit, which is on the other side of the railway. The point at which they are brought by a siding to the railway is about 400 yards nearer Troon than the Bellfield siding, but inasmuch as the former siding joins the up line they must, in order to get to the down line, be drawn back to a cross-over which is a few yards further from Troon than the Bellfield siding. In point of fact the coals from the Wellington pit were invariably, and the coals from the Bellfield pit were usually taken to a place on the further side of the Hurlford station where the trains were marshalled, and after this was done they were despatched from the Hurlford station to Troon.

The Bellfield pit and the Wellington pit are both situated within the same mile from Troon—that is to say, they are both more than miles and less than miles from that place.

The defenders contend that the question arising under the 83rd section must be determined by reference to the point at which the traffic actually reached their line. They maintain that their contract was to carry it from that point to Troon, and that inasmuch as the pursuers' coals reached the railway at a point some 400 yards further from Troon than the point at which the coals from the Wellington pit reached the railway, they were not carried "over the same portion of the line of railway." They admit that as matters now stand, and as they stood during the period to which the action relates, the Wellington coal could not get on the down line without being drawn back to the cross-over which I have mentioned. They further admit that in fact both sets of traffic were usually marshalled on the further side of the Hurlford Station, and despatched from that station. But they say that all this was for their own convenience only, and that in a question with the pursuers and the Portland Colliery the coals of each company are to be held as having been carried to Troon from the point at which they respectively reached the railway.

If this argument be sound there is great difficulty in seeing how any coal company could benefit by the provision of the Act. It is hardly conceivable that any two pits should be so situated as that the coals raised therefrom should reach the railway at points precisely equidistant from the place of destination. The argument implies that in order to be within the statute the traffic must be carried over exactly the same portion of the rail-

way, and the defenders did not hesitate to contend that if the traffic were despatched from different parts of the same station to the same destination the statute would not apply. I cannot adopt an argument which would deprive the statute of all its power, and which is supported neither by reason nor authority.

The pursuers urged that the traffic in question was to be regarded as having been carried between Hurlford Station and Troon, and therefore that it was carried over the same portion of the railway. It is true that it was not received at Hurlford Station. As I have said, the Wellington pit coal was invariably despatched from that station, and though in some cases the Bellfield coal was carried on to Troon from the siding at which it reached the railway, it was usual so to marshal it that it was despatched from Hurlford Station. Consequently if the Wellington coal be considered as despatched from Hurlford it passed over the same distance as the pursuers' coal, or in some cases over a longer distance. This is a reasonable view, for it cannot be doubted that the two classes of coal were, in the fair sense of the phrase, traffic between Hurlford and Troon.

There is, however, another argument which was advanced by the pursuers, which in my opinion furnishes a safer ground of judgment. The coal from each pit reached the railway within the same mile from Troon, and apart from any favour shown to the one over the other, the charge for carriage would be the same. For the defenders charge a certain rate per mile, and every part of a mile counts as a mile. The 83rd section of the Railway Clauses Act is intended to provide for equality of charge. It enacts that all tolls shall be charged equally to all persons. and after the same rate for all goods of the same description passing over the same portion of the line. As every part of a mile may be charged for as a mile, I think that I may hold that every mile and every part of it is, within the meaning of the section, one and the same portion of the railway whether the traffic passes over a larger or smaller part of it. In short, each mile is to be considered as a unit in determining the portion of the railway over which the traffic passes just as it is considered as a unit in fixing the charges which the railway company are entitled to make. Such a construction, which I think does no violence to the language of the statute, is consistent with its purpose, and preserves its efficiency. I prefer it to that maintained by the defenders, which in my opinion would make the statute a dead letter in regard to traffic of the kind with which we are here concerned. In this view, both classes of coal were carried over the same portion of the railway, and therefore the complaint of the pursuers is well founded.

Lord Young and the Lord Justice-Clerk concurred.

Lord Lee was absent.

The Court pronounced the following interlocutor:—

"Find in fact and in law in terms of the findings of the Sheriff-Substitute contained in his interlocutor of 29th June 1887, which are held as herein repeated: Therefore dismiss the appeal and affirm the said interlocutor except in so far as the sum concluded for in the petition and decerned for is erroneously stated to be £190, 0s. 3d. instead of £178, 16s. 9d., and to that extent and effect alter the said interlocutor: Of new repel the defences and ordain the defenders to make payment to the pursuers of the said sum of £178, 16s. 9d., with interest thereon at the rate of five per cent. per annum from the 1st day of September 1885 till paid: Find the pursuers entitled to expenses in the Inferior Courts and in this Court.

Counsel for the Appellants—Balfour, Q.C.—Guthrie. Agents—John Clerk Brodie & Sons, W.S.

Counsel for the Respondents—Asher, Q.C.—Low. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Tuesday, February 26.

FIRST DIVISION.

STEWART *v.* KENNEDY.

(*Supra*, p. 338).

Process—Petition for Leave to Appeal to the House of Lords.

In an action against an heir of entail in possession, the pursuer sought to have it declared that the defender had entered into a valid contract for sale of the estate, and to have the defender ordained to implement that contract. The Court unanimously found that a valid contract of sale had been entered into between the pursuer and defender, and appointed the pursuer to lodge in process a draft disposition by the defender of the estate in favour of the pursuer. Petition for leave to appeal against these judgments to the House of Lords *refused* on the ground that further questions of importance might arise between the parties, and that the pursuer had an interest to have the case finally disposed of before appeal was taken.

This was a petition by Sir Archibald Douglas Stewart, the defender in the above case, for leave to appeal to the House of Lords against the interlocutor of Lord Trayner of 21st December 1888, and the interlocutor of the First Division of 8th February 1889.

As the judgment of the Court had been unanimous, and as the conclusions of the summons were not exhausted, the petition was presented in terms of the Act 48 Geo. III. cap. 151, sec. 15.

The pursuer in the action had lodged the draft disposition in accordance with the interlocutor of 8th February. He appeared and opposed the petition.

Argued for the petitioner—The Court had decided what was the main question between the parties, and the petitioner desired leave to appeal against that decision. Till it was finally settled that there was a valid contract entered into between the parties, it would be premature to compel the petitioner to implement the contract. There would be no ground for an appeal in the later stages of the case.