that so soon as the old Scotch Statutes were, with respect particularly to the insertion in deeds of the writer's name, modified by the Conveyancing Act of 1874, all objections to deeds wholly or partially printed, or wholly or partially typewritten, ceased to have any force, and did so altogether irrespective of the Act of 1868.

The old Scotch Statutes, it must be observed, made no distinction been printing and writing. Mr Ross, no doubt (vol. i. 38) objects to the admission of deeds not entirely in writing. But Lord Stair states expressly (iv. 42, 3) that 'writ comprehends both *chirographum* and *typographum*,' and if any doubt as to this existed it was removed by the Interpretation Act of 1889, to which I have already referred. The difficulties, so far as there formerly were difficulties, in the way of printed deeds were of a practical character, and arose mainly in connection with the necessity of inserting in all deeds the writer's name as required by the Statute of 1593, c. 179. The word 'writer' might perhaps include 'printer,' and more easily 'typewriter.' But printed matter is not generally the production of one person, and although that might not apply to typewriting, yet while the writer required to be named and identified, it was perhaps open to doubt whether it was not also necessary that what he wrote should be of a distinctive character. All this, however, is now altered by the Act of 1874. The writer having no longer to be identified, there is no longer, as it seems to me, any difficulty in giving the same effect to print or typewriting as to ordinary handwriting. Nor is there any room for distinguishing between deeds wholly printed or wholly typewritten and deeds partially printed or typewritten. It appears to me that when the matter is examined and understood it does not admit of serious doubt, and therefore I repel the defences and grant decree, and having considered the question of expenses I think in this case expenses must follow the result.

His Lordship granted decree with expenses.

Counsel for the Pursuers—Salvesen, K.C. — Craigie. Agent — J. Gordon Mason, S.S.C.

Counsel for the Defenders — Cullen. Agents—Macandrew, Wright, & Murray, W.S.

Tuesday, March 18.

FIRST DIVISION.

[Lord Low, Ordinary.

GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY *v.* CALEDONIAN RAILWAY COMPANY.

Railway — Joint-Line — Statutory Regulation of Use—Accident Claims—Accident Due to Fault of Signalman — Claims Made against One Joint-Owner — Liability of Other Joint-Owner in Relief—Caledonian and Glasgow and South-Western Railways (Kilmarnock Joint-Line) Act 1869 (32 *and* 33 *Vict. c. xcvii.*), *sec.* 54 (20) *and* (22).

The Special Act regulating the use and management of a joint-line owned by two railway companies, who both used the line, enacted that if an action was brought against either of the two companies separately "for any act or default in relation to the joint-line committed or incurred wholly or in part by the two companies, . . . the company against which such action has been brought . . . shall be entitled to sue the other company for recovery of . . . a fair proportion of any damages . . . to which the company so sued shall have become liable by reason of any such action," . . .

Held that under this provision where one of the companies had paid compensation (which it was agreed should be treated as if paid upon decree) for injuries caused by an accident on the joint-line, due to the fault of a signalman in the employment of the joint-committee, which under the Act managed the joint-line, committed in the course of working the signals thereon, the other company was bound to contribute one-half of the amount paid as compensation, the fault of the signalman being an act or default in relation to the joint-line committed by the two companies jointly.

The Glasgow, Barrhead, and Kilmarnock Joint-Line is the joint property of the Caledonian and Glasgow and South-Western Railway Companies. It is owned and worked under the provisions of the Caledonian and Glasgow and South-Western Railways (Kilmarnock Joint-Line) Act 1869, and its affairs are managed by a Joint-Committee appointed equally by the directors of the two companies. The joint-committee maintain and work the joint-line, including the permanent way, signals, and all works connected therewith. Certain tolls fixed by the Act are payable by the companies for using the joint-line, and they participate equally through the joint-committee in the profits arising from their traffic both local and through.

The Caledonian and Glasgow and South-Western Railways (Kilmarnock Joint-Line) Act 1869 (32 and 33 Vict. c. xcvii.) enacts as follows:— Sec. 54, sub-sec. (20)—"All actions, suits, indictments, and other pro-

ceedings at law or in equity, or otherwise in relation to the joint-line which might be brought and prosecuted by or against either of the two companies, if that company were sole owner of the joint-line, may be brought and prosecuted by or against the two companies jointly or either of them separately."

Sub-section (22)—"If any action, suit, indictment, or other proceeding at law or in equity shall be brought or prosecuted against either of the two companies separately for any act or default in relation to the joint-line committed or incurred wholly or in part by the two companies jointly, or wholly by the other company, the company against which such action, suit, indictment, or other proceeding at law or in equity shall have been brought or prosecuted, shall be entitled to sue the other company in any court of competent jurisdiction for recovery of the whole or a fair proportion of any damages, penalties, costs, or other payments to which the company so sued or prosecuted shall have been adjudged or become liable by reason of any such action, suit, indictment, or proceeding."

By sub-section (30) of the same section it is further provided that, subject to the provisions of this Act, and to the control and management of the joint-committee, each of the two companies shall have power "to run over and use the joint-line and stations" with through traffic, and the joint-committee shall, in full of all tolls, rates, and other charges except terminals exigible for such traffic in respect of the joint-line, receive certain tolls therein specified.

Both companies exercised their running powers under the Act. On 11th February 1899 an express train belonging to and run by the Glasgow and South-Western Railway Company left Carlisle at 3·30 p.m., and was due to arrive at Glasgow at 7·25 p.m. When travelling over the joint-line this train came into collision near Pollokshaws Station with a goods train belonging to the Caledonian Railway Company. Several of the passengers in the Glasgow and South-Western Railway Company's train were injured and some of the rolling plant was damaged. Claims were made by the injured passengers, and these were dealt with and settled by the Glasgow and South-Western Railway Company, the amount paid being £3234, 17s. 7d. A sum of 18s. 7d. was also paid in respect of the milk traffic carried by the train.

The Glasgow and South-Western Railway Company thereafter brought the present action against the Caledonian Railway Company, in which they concluded for payment of £1618, 18s. 1d., being one-half of the above-mentioned sums.

The parties agreed that the case should be treated by the Court in the same way as if the sums paid in settlement of the claims had been paid upon decrees granted in actions at the instance of the claimants against the pursuers.

The pursuers averred that the collision was due to the fault of a signalman named Duncan Kennedy in the employment of the joint-committee, and further or otherwise that it was caused by the defective condition of the signalling apparatus due to the fault of the joint-committee or their servants.

The pursuers pleaded, *inter alia*—"The defenders being bound under and in terms of the above-mentioned Act of 1869 to pay an equal share with the pursuers of said damages and losses, the pursuers are entitled to decree as concluded for."

The defenders stated that they took no exception to the sums for which the claims in question were settled. They averred that the accident was caused by a defect in the signalling appliances in connection with which fault could not be imputed to anyone. They denied that the collision was due to the fault of the signalman Duncan Kennedy.

The defenders pleaded, *inter alia*—"(3) *Esto* that said accident was due to the fault of the said Duncan Kennedy, in a question between the pursuers and defenders, the pursuers are alone liable for any loss, injury, and damage arising to passengers in the pursuers' train."

By interlocutor dated 8th January 1901 the Lord Ordinary (Low), after hearing counsel in the Procedure Roll, allowed a proof before answer.

The following narrative of the facts established by the proof is taken from the opinion of the Lord President:—"On the evening of the accident a goods train belonging to the defenders was standing on the loop line, ready to start for Glasgow as soon as the down main line was clear. When Kennedy, the signalman, went on duty at the north signal-box he sounded four beats on his bell to the south signal-box, indicating that the goods train was ready to start. If the down main line had been clear it would have been the duty of Macleod, the signalman at the south signal-box, to answer by three beats of the bell, indicating that the goods train might start, but if the down main line was not clear it was his duty to answer by one beat, indicating that the train could not start. As Macleod knew that the pursuers' express train, already mentioned, was coming from the south on the down main line, he answered Kennedy by one beat, indicating that he could not permit the goods train to leave. After Kennedy sounded the four beats of his bell to the south signal-box, he, instead of waiting for a reply, left his box and spoke to the guard of the goods train. I think that Kennedy was wrong in leaving his signal-box after he had sent an important message to the south signal-box before he had received a reply. After Kennedy had spoken to the guard of the goods train he heard the bell from the south signal-box sounding one beat, which was in point of fact the only beat then sounded from that signal-box. Kennedy, however, for some unexplained reason assumed that the one beat which he heard was the last of three beats, and going into his box he acted on that assumption and allowed the goods train to pass on to the down main line. It appears to me

that Kennedy was in fault in leaving his signal-box at such a time, and that he was still more in fault in assuming that the one beat was the last of three beats, and that he was also in fault in handling the lever with such force as he used. All the levers in the north cabin are under the control of the south cabin, and none of them can be worked without the releasing lever in the south cabin (that is, the lever which opens a locking arrangement between the two boxes) being pulled over, if the apparatus is in proper order, unless considerable force is used. As in the present case the main down line was not clear, the arrival of the express from the south being expected, Macleod sent one beat to Kennedy and retained the lever in its normal position. This should have shown Kennedy that he must not allow the goods train to leave the loop line, but he pulled over the lever with considerable force, overcoming the resistance of the locking apparatus, and allowed the goods train to start. He seems to have then had some misgivings, as he left his signal box and signalled with a lamp to the goods train not to start. He states that he then returned to his box, and being satisfied that the lever was right, he went out and told the driver of the goods train to start, which he did, and then the express train coming up dashed into it."

On 26th June 1901 the Lord Ordinary pronounced the following interlocutor:—"Decerns against the defenders for payment to the pursuers of the sum of £1617, 18s. 1d. sterling, together with the legal interest thereof at the rate of 5 per cent. per annum from the 8th day of June 1900 until payment: Finds the defenders liable in expenses, and remits," &c.

Opinion.—"If the interpretation I put upon the statute when the case was in the Procedure Roll was sound, I think Mr Ure correctly put it when he said that the question is, whether the pursuers would have had a good defence to a claim by passengers injured in the accident. On the evidence I am quite clearly of opinion they would not have had a good defence, because—though I am sorry to say so—I think it is proved that the immediate cause of the accident was the fault or negligence of the signalman (Kennedy, who was in charge of the signal-box). . . .

"In that state of facts I think it is vain to say that the Railway Company would have had any defence in a question with a passenger, and that is sufficient for the decision of the case before me.

"But with regard to the point about which so much evidence has been led, namely, as to whether there was fault on the part of the Railway Company as to the condition in which this bracket was, I am very glad I have not to give any finding on that point. I must say my impression from the evidence is that there was no fault. The beam was selected by most capable men, who were quite conscious of the importance of using a sound beam for the purpose, and they had no doubt that it was perfectly sufficient, and I am rather inclined to think that the way in which this beam had been decayed under the lip of one bracket and under none of the others is just one of those curious occurrences that cannot probably be accounted for and which no foresight will at all times meet. But I think that the fact that in my judgment it is proved that the immediate cause of the accident was due to the fault of one of the servants of the Caledonian Railway Company is sufficient for the disposal of this case, and accordingly I shall give decree for the sum sued for with expenses."

The defenders reclaimed, and argued—At common law an injured passenger could only sue the company with which he had a contract, *i.e.*, in this case the Glasgow and South-Western Railway Company, and it only was liable. The only alteration made with regard to such liability was by section 54 (22) of the Act which regulated the case where any act or default had been committed in relation to the joint-line. But the joint-line only meant the joint property, for here there was no question of a partnership or a joint-undertaking, and the only default in regard to it which there could be was in supplying bad material or inefficient men. There was no averment to that effect in this case, and consequently there was no default involving liability upon the defenders. The signalman once he had been appointed was the servant of whichever company from time to time was using the line, and the other company was in no way responsible for him.

Argued for the respondents—Section 54 (22) made both companies liable where there had been any act or default committed or incurred in regard to the joint-line by the companies jointly, and that was the case here. The obligation was to supply a line complete with appliances and safe for use, and the default might clearly be committed through the servants appointed. There was no ground for restricting the default referred to to defaults in regard to the "joint-line" as a physical structure merely.

At advising—

LORD PRESIDENT—The question in this case is whether the pursuers are entitled to be relieved by the defenders of one-half of the damages and expenses which they have had to pay in consequence of an accident which occurred on the Glasgow, Barrhead, and Kilmarnock Joint-Line.

By the Caledonian and Glasgow and South-Western Railways (Kilmarnock Joint-Line) Act 1869 the line is vested in the pursuers and the defenders jointly, and its affairs are managed by a joint-committee appointed equally by the directors of the two companies under section 54. The joint-committee maintain and work the joint-line, including the permanent way, signals, and all works connected therewith. The pursuers and defenders participate equally, through the joint-committee, in the profits arising from the traffic on the joint-line, both local and through.

On Saturday 11th February 1899 a train belonging to and run by the pursuers left

Carlisle at 3·30 P.M. and was due to arrive in Glasgow at 7·25 P.M., travelling on the down main line. When travelling over the joint-line that train came into collision, near Pollockshaws station, with a goods train belonging to the defenders, and several passengers in the pursuers' train were injured and some of the rolling-plant damaged.

The pursuers allege that the collision was caused by the fault of Duncan Kennedy, a signalman in the employment of the joint-committee on the joint-line, and they allege further or otherwise that the collision was caused by the defective condition of the signalling apparatus at or near Pollockshaws station, which defective condition was caused by the fault or negligence of the joint-committee or their servants.

[*His Lordship then stated the facts ut supra.*]

Besides maintaining that they are not liable in law for reasons which I shall afterwards consider, the defenders contend that the pursuers might have successfully pleaded that there was a latent defect in a beam of wood to which the bracket of the lever was fixed, and that it was in consequence of this that the lever did not act properly, but I do not think that a case of latent defect could have been established, or that if there was such a defect the accident was caused by it. Under these circumstances it appears to me that if a passenger who had purchased from the pursuers a ticket for the express train had been injured in the collision, and had sued the pursuers for damages in respect of his injuries, they would have been clearly liable to him.

The question, however, is whether they would in such an event have been entitled to claim partial relief of the damages from the defenders, and the answer to this question depends upon the construction and effect of section 54 of the Act of 1869, and especially of subsection (22) of that section, which provides that if any action, suit, indictment, or other proceeding at law or in equity shall be brought or prosecuted against either of the two companies separately for any act or default in relation to the joint-line, committed or incurred wholly or in part by the two companies jointly, or wholly by the other company, the company against which such action, suit, indictment, or proceeding at law or in equity shall have been brought or prosecuted, shall be entitled to sue the other company in any court of competent jurisdiction for recovery of the whole, or a fair proportion, of any damages, penalties, costs, or other payments to which the company so sued or prosecuted shall have been adjudged or become liable by reason of any such action, suit, indictment, or other proceeding, and I concur with the Lord Ordinary in thinking that they would have been entitled to claim partial relief. The defenders, however, contend that the words "Joint-Line" mean merely the physical structure, not the joint undertaking, and that Kennedy's fault was not "in relation to the joint-line" in the sense of sub-section (22). But this appears to me to be too narrow a construction, as I consider that the plain purpose of the section was to provide for contribution by each of the companies towards any claims of damages or other similar claims resulting from their conduct of the business of the line. I understood the defenders' counsel to admit that the mistake of a surfaceman attending to the condition of the line might infer liability to contribute, but he contended that such liability did not arise from acts or omissions of servants engaged in conducting or regulating the traffic on the line. It appears to me, however, that there is no solid ground for this distinction, the right of relief extending (in my judgment) to every liability which either of them might incur in prosecution of the joint enterprise. In this connection I understood the defenders to maintain that in what Kennedy did on the occasion in question he was acting as the servant of the pursuers, not of the joint-line, but it appears to me that this contention is not well founded, inasmuch as Kennedy was the servant of the joint-committee. Upon the whole matter I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD ADAM and LORD KINNEAR concurred.

The LORD PRESIDENT intimated that LORD M'LAREN concurred.

The Court adhered.

Counsel for the Reclaimers—Clyde, K.C. —Deas. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Respondents—Guthrie, K.C.—A. S. D. Thomson. Agents—John C. Brodie & Sons, W.S.

VALUATION APPEAL COURT.

Tuesday, February 11.

(Before Lord Kyllachy and Lord Stormonth Darling.)

RINTOUL *v.* ASSESSOR FOR DUNFERMLINE.

Valuation Cases—Values—Subjects Let—Consideration other than Rent—Club—Payment of Salary to Landlord as Clubmaster—Lands Valuation (Scotland) Act 1854 (17 *and* 18 *Vict. cap.* 91), *sec.* 6.

The landlord of certain premises which were occupied by a workingman's club was clubmaster and manager of the club at a salary of £2 a-week, and in that capacity served at the bar, and along with the club committee bought in the drink. The landlord, who was one of the originators of the club, and a member of the committee, had entered into an agreement with the committee of the club at the date of its formation to let the premises to the