this case, as we have done—not very often, but certainly as we have in some cases done—have abided by our own opinion, and reversed the decision below, notwithstanding that unanimity. But still it is more satisfactory certainly for us to feel, that in this case there has been a very great difference of opinion upon this point among the learned Judges in the Court below.

Mr. Rolt.—With respect to costs, my Lords, your Lordships are about to affirm the interlocutors of the Sheriff. There are two interlocutors of the Sheriff, and you are about to affirm these interlocutors. They were appealed to the Court of Session, and I apprehend the principle of the decision by this House will be, that your Lordships will make the order which the Court of Session ought to have made.

LORD BROUGHAM.—You ask, that we shall do that which the Court of Session ought to have done, and give you the costs in that Court.

Mr. Rolt.—That is all I ask.

LORD BROUGHAM.—We give the judgment which they ought to have given, repelling the advocation with costs.

Mr. Solicitor-General.—The judgment which they did give was the one which they ought to have given till they had the light of the decision of this House, by reason of the existence of the *Jedburgh case;* and it would be an extraordinary thing indeed if this House were to say to the Court of Session,—you ought, in the face of the *Jedburgh case*, to have dismissed the appeal from the Sheriff's interlocutors, with costs. It is quite clear they would be governed by that authority.

LORD BROUGHAM.—Do you mean that they were bound by the *Jedburgh case?*

Mr. Solicitor-General.—Certainly, especially having regard to what you yourselves have said, that the present appeal was brought to try the *Jedburgh case.*

Mr. Rolt.—One word upon that point. Your Lordships see that it is not as though the law had been settled by a series of decisions.

LORD BROUGHAM.—Still there was the *Jedburgh case* standing.

Mr. Rolt.—Our proceedings were commenced, I believe, before the *Jedburgh case.*

LORD BROUGHAM.—At that date the decision in the *Jedburgh case* was a binding decision upon the Court.

Mr. Rolt.—The costs in this case had been incurred before the decision in the *Jedburgh case;* —the *Jedburgh case* came to be decided, and was decided, as your Lordships have said, by a narrow majority; and I should submit, that in the Court of Session, to say nothing of the costs in this House, we should have had the costs before the Sheriff.

LORD CHANCELLOR.—Their Lordships will give no costs.

Interlocutors reversed.

Second Division.—Henry Ward, *Appellant's Solicitor.*—Deans and Rogers, *Respondent's Solicitors.*

JULY 8, 1853.

THE EDINBURGH and GLASGOW RAILWAY COMPANY, *Appellants*, *v.* THE STIRLING and DUNFERMLINE RAILWAY COMPANY, *Respondents.*

Railway Acts — Clause — Construction — Agreement — Completion of part of Railway — *The Edinburgh and Glasgow Railway Company having agreed to lease the line of the Stirling and Dunfermline Railway on its completion, a question arose, whether they were bound in implement, where, though a considerable portion had been completed, a part remained to be executed.*

HELD (affirming judgment), *that the words "on completion of the railway or any part thereof," meant "completion for purposes of working," and therefore the E. & G. R. Co. were bound to implement*: (Lord St. Leonards dissenting).[1]

The defenders appealed against the judgments of the Court of Session, maintaining that they ought to be reversed.—1. As being inconsistent with their acts of parliament. 2. The appellants are not bound to take the line, or any portion of it, in lease, seeing that the arrangement was to be at an end in the event of failure to obtain a direct connection between the Edinburgh and Glasgow Railway and the line of the Stirling and Dunfermline Railway, and because such connection is not now obtainable. 3. The Stirling and Dunfermline Railway Company not being in a condition to give the appellants possession of the subjects for which rent was to be paid,

[1] See previous report 14 D. 747; 24 Sc. Jur. 325. S. C. 25 Sc. Jur. 508.

cannot enforce the obligations of the lease upon the appellants. 4. The finding of the Court below, that the appellants are bound to pay interest at the rate of four per cent. upon the costs of obtaining the statutes of 1848 and 1849, is unwarranted by the statutes, and inconsistent with equity.

The *respondents* in their *printed case* supported the judgments on the following grounds:—1. By the terms of the acts, the appellants were bound to take and hold on lease the railway and branch railways thereby authorized to be constructed, for a period of 35 years after their completion, or the completion of any part, and to pay the rents, and perform the whole stipulations contained in the acts. 2. The portion of the railway extending from the joint station of the Edinburgh Perth and Dundee Railway and the Stirling and Dunfermline Railway, near the town of Dunfermline, to the station of the Stirling and Dunfermline Railway in the town of Alloa, having been completed by the respondents, and the completion having been certified in terms of the statute on the 4th day of December 1850, the appellants were bound to enter into possession of that portion of the railway, and to pay the rent, and to perform all the other prestations incumbent on them as lessees, after that date.

Sir F. Kelly Q.C., and *Rolt* Q.C., for appellants.—The true construction of the acts is, that the subject of the lease was to be one entire thing, as the rent was to be one entire sum, and the term was to be one entire period. The words, "on the completion of any part thereof," create the difficulty. But the "part" there spoken of must be understood as that part of the line which should only ultimately have been completed, for the company might, for various reasons, think fit not to execute the whole line; and it is now decided by *The York and North Midland R. Co.* v. *The Queen*, 1 E. & B. 178, 858, that a company is not bound to execute the whole line, or even any part of the line, after obtaining their act. It cannot be contended that we are to take half a mile of the railway when it is completed, and so on, bit by bit; for, then, while the first bit would be enjoyed for 35 years, the last bit, if not completed till five years afterwards, could only be enjoyed for 30 years; and yet the act does not contemplate a separate term of 35 years for each successive portion of the line, as it becomes completed. The only consistent construction is, that the term of the lease was not to commence until the respondents should have executed all that they intended to execute.

[LORD ST. LEONARDS.—Then you would hold this 13 miles of the line free of rent, until the whole was finished?]

No; we are not bound to take it at all until that period. Unless ours is the correct construction, the respondents will have it in their power, by completing a part, to throw on us the entire burden of the expenses, which we are to pay in the shape of rent, and it would be most unfair that the expense of the whole line, and of obtaining the act for the whole line, should be thrown on the fragment first completed.

[LORD BROUGHAM.—But you are only to pay a reasonable proportion in respect of the part which is completed; and as to the expense of the act, that would be as great in respect of a short as a long line, for the legislature must sanction one no less than the other.]

But the expense of the two subsequent acts in 1848 and 1849 will be thrown upon us, which we ought not to be subjected to pay. It might not have been unreasonable for us to pay this, if there had been a purchase out and out; but here it is only a temporary possession for 35 years that we are to have. The Court below were therefore wrong in the way in which they dealt with this case. Thus they were clearly wrong in their assumption, that they could compel the respondents to go on and complete their line, for the case above quoted must be taken to settle the point the other way.

[LORD BROUGHAM.—But a writ of error has been brought to this House in that case; you are, however, no doubt entitled to assume the law as laid down there.]

[LORD ST. LEONARDS.—That was a case, however, as between the company and the public; here it is as between two companies, and probably one company might bind itself, in a question with another, to complete their line.]

Besides the construction of the statute, we say that there was an agreement entered into in 1845, of which it was an express condition, that the whole arrangement between the two companies was to become null and void if we should not succeed in obtaining an act of parliament to effect a connection between our line and that of the respondents. That condition accompanied the act of parliament, and therefore we say that, as we have failed in our object, the arrangement is at an end. At all events, if it still subsists, it is clear, not only from the preamble of the act of 1846, and the plans and maps referred to by it, that we were to have a junction with the Scottish Central Railway at two points—one north of the Forth, and the other having an independent terminus at the gas works in Stirling. As, therefore, the respondents, by their own negligence, have lost the power of acquiring this terminus, we cannot be called upon to implement the agreement; for, without that essential advantage, the lease of their line, or a fragment of their line, will be useless to us, and it could not be worked with a profit.

Sol.-Gen. Sir R. Bethell and *Inglis* (D.F.), for respondents.—The interlocutor of the Court of Session is in all respects right. It is impossible to hold that the agreement in 1845 is to be

taken as embodying the contract, for there is an essential variance between the line there contemplated and that afterwards authorized, besides that the act itself supersedes that agreement, inasmuch as it embodies the whole details without reference to any other document. The true construction of that statute is, that the lease was to come into existence on the completion of a part of the railway—by which is meant a reasonable part, such as might be worked at a profit—and for that the appellants were to pay a rent, which was to vary according to the extent of the part completed. That a reasonable portion was meant, was implied in the fact of the appellants' own engineer being appointed to certify the completion of that part, and to estimate the sum to be paid as rent. It is said, that an obligation lay on us to make two junctions with the Scottish Central, and it is said the plans accompanying the act of 1846 shewed a junction at both points. This we deny, so far as the junction near the gas works was concerned; but even if the plans did shew it, it is impossible to hold that everything exhibited on such plan is incorporated in the act—*Todd* v. *North British R. Co.*, 5 Bell's App. Ca. 184. But if such an obligation lay upon us under the act of 1846, it was entirely removed by the subsequent act of 1849. Therefore the Court below were quite right in their interlocutor.

LORD CHANCELLOR CRANWORTH.—My Lords, although this case has occupied a very considerable portion of time in argument—perhaps rather more than was necessary—it certainly is a question which, in the view I take of the case, lies in the very narrowest compass. The main question is as to the construction of the act of 1846, and of certain sections in particular, beginning at section 41. Now, on that subject, I own, that if I had been in the Court of Session, probably I should have taken a different view from what these learned Judges have taken, as at present advised. I will state why it is—and I feel bound so to state, although it will be productive of no consequences in the result—that doubts occur to me whether the construction put on these sections is correct.

The reason I entertain that doubt is this:—it seems to me perfectly clear that some violence must be done to the language of the act; the language is, "the railway and branch railways shall, on their completion, or on completion of any part thereof, be leased by the company."

Now it is clear, that, taking these words strictly literally, would be involving the parties in that which would be absurd. It cannot be that, on the completion of half a mile, the appellant company were bound to take it, and pay a very heavy rent for it; that is not what was contemplated by the legislature. The only question is, how, with the least possible violence to the language, you are to interpret the expression, "or any part thereof"? The construction put on it by the Court of Session is, that it means any reasonable part; that is the way in which it was put by the Solicitor-General—any reasonable part. I am very much inclined to adopt the same view; but, then, where I feel inclined to differ from the Court of Session is this—that I do not think that the question of whether a particular part is a reasonable part, is a question that the legislature meant to be solved by the Court. I think the true meaning is this—upon completion of the whole, they are to take the lease, or, if the parties think fit, on the completion of any part short of the whole. That was necessary, because one railway can only lease to the other by virtue of an express authority given to it by the legislature. If the legislature had said, you may lease the line from point A to point B, grave doubts might have arisen whether, if they did not carry it quite up to A—for instance, if in the present case it was thought not convenient to cross the Forth, but to end at a station north of the Forth—doubts might be raised if that were a subject matter within the competency of the parties, the one to lease, the other to accept the lease. The way I interpret that is, that this is the meaning of it, that it was on the completion of the entire railway, or a reasonable part—the reasonableness to be determined by the parties themselves—that the lease was to be completed. That is the interpretation which I confess I am inclined to put on this act of parliament.

Now I arrive at this conclusion upon two or three considerations, mainly resting on these grounds. I do not see what the Court has to guide it in saying, whether any particular part is a reasonable part or not. What is to be the test of its being a reasonable part? The Solicitor-General suggested it might be from station to station; that might involve the parties in infinite difficulty. There is nothing to be got from that. Then it was said, such a portion as they can reasonably work at a profit. There is nothing before the Court from which they have any means of arriving at a correct conclusion on the subject. I have noticed, with regard to this matter, what was pointed out by Sir Fitzroy Kelly, that it might have been completed the whole way from Stirling to Dunfermline, and yet the parties could not have worked it. The legislature says—till the branches are completed, the main line shall not be worked. Then again, if they are obliged to take a part, I never have been told of any sufficient solution of the difficulty, what is to happen if the whole line is not completed. I do not know how far it does or does not appear that they could complete it. Upon that I give no opinion; but if they are bound to take a part, it was possible that the whole could not be completed. Then the Solicitor-General says: but the legislature has not contemplated that. The legislature has contemplated it, and has provided for it. That is therefore the view I confess I should have taken if the thing had been unaffected by any further decision of the Court; and I confess I think that view may be borne

out by the words which are to be found in the preamble of the act of parliament, beginning—"Whereas the said railway may be beneficially worked in connection with the Edinburgh and Glasgow Railway, and the company, to whom the last mentioned railway belongs, are willing to take in lease and work the same, if authorized by parliament so to do, and the several persons"—that is, the Stirling Company—"are willing to lease the railways to such company."

Now, that being the object—the Edinburgh and Glasgow Company being willing to take a lease of this railway, that is, of the main line and the branches—and the other company being willing to grant it—the act is passed, and this 41st section comes in and says—"On completion of this railway, or any part thereof, it shall be lawful for the one to make, and for the other to take, a lease for the term of 35 years."

I confess, on these grounds, I should have come to a different conclusion from that at which the learned Judges of the Court of Session have arrived on this part of the case. But I believe that is not the opinion of the majority of your Lordships; I believe the majority of your Lordships are, as I have collected, in favour of the decision of the Court of Session. I have felt it my duty to give my opinion to your Lordships, as I do not think it is ever fit that Judges who hear a case should abstain from stating the conclusions at which they have arrived, however they may differ from the rest of the learned Judges. Having so done, I have discharged the duty which I owe to your Lordships, and I leave it to the rest of your Lordships to dispose of the case as you think fit.

LORD BROUGHAM.—My Lords, in this case I entirely agree with my noble and learned friend on the woolsack, that the question lies in a very narrow compass, and that the construction of the words to which he has referred in those sections of the act of 1846, is not overruled or altered at all by what is to be found in the act of 1849. I also agree with my noble and learned friend, that it is expedient that any difference or inclination of opinion should be stated fairly and frankly here. My Lords, with respect to the decision of the Court below in the case now at the bar, and under consideration, my noble and learned friend strongly inclines to think, that had the question been before him for the first time, and he been in the position of the Court below, he would have adopted a different construction of the act. My noble and learned friend does not say that he goes so far as to hold that he would go against the decision—that his opinion is so strong, that if it rested upon him, he is so confident in his opinion against that of the whole of the learned Judges of the Court below, both the learned Lord Ordinary before whom the case first came, and the four Judges to whom it went by advocation—by appeal, as it were, from the Lord Ordinary—I do not understand him to say, that his opinion is so clear and strong against them, that upon that alone he should have been disposed to have come to a different conclusion. My Lords, I certainly agree with the Court below. I hold that they adopted the right construction of the words of this act. "Be it enacted," (I am now upon the 41st section,) "that the main railway and branch railways," which is undoubtedly the nominative to which what follows refers, "shall be executed,"—I pass over that, it is not important as regards the present question—"and shall, on their completion, *or*," in the alternative, "on their completion," that is, their completion in the whole, "or on the completion of any part thereof," their completion in part,—"be leased by the company, and shall be taken and held in lease for the period of 35 years after such completion,"—that is, if it is a completion of the whole, after total completion—or if it is a partial completion, after the completion of that part—"for the period of 35 years after such completion, by the Edinburgh and Glasgow Railway company, and shall, during the said period, vest in them subject to the conditions therein contained." I hold that to be a provision; it is a contract—a statutory contract, as it were—between the parties, that the parties here appellant shall take and hold in lease a part, from and after the completion of that part, during the period of 35 years that apply to the taking of the whole.

My Lords, it is said, and it has been argued at the bar before us with reference to that, that something must be supplied to a certain degree — something must be supplied by intendment as to completion. I take it, however, that we may read the word "complete,"—and "completion," as if it meant completion for working—complete in such a state as to be fit for working, and which would not only imply that the rails were to be laid down, and the railway to be so constructed that it could be worked, but that it should be to a certain extent complete during a certain material part of its progress—I should say from station to station—without which, undoubtedly, it could not be said to be complete for working; and this would exclude the supposition, that you are to go to the extreme length of saying, that this being an obligation to take the whole upon lease, and to hold it upon lease, operates from the period of the completion of half a mile or half a quarter of a mile. I think the rational construction of the words "completed" and "completion" excludes that supposition.

Then provision is made for the rent as well as for the term. The rent is to be at 4 per cent. upon the expenses of obtaining the act;—and very properly so, because, whether only a part or the whole is to be enjoyed for that period of 35 years from the time of the total or partial completion, it is proper they should pay, even though a part only should be enjoyed by them, a certain

portion of the expense of obtaining that act, without which no part would be completed, and no part consequently enjoyed by anybody.

But, then, not only is the proportion of 4 per cent. upon the expenses of the act to be taken as rent, but the rest of the rent is to consist of 4 per cent.—upon what?—upon the expenses of the construction, which, of course, would be the construction of the part completed and enjoyed. That is obvious.

My Lords, I do not enter further into the case. I have seen nothing to disapprove of in the opinions and arguments given by the learned Judges in the Court below in support of the conclusion to which they have arrived. I think, upon the whole, they have put a right construction upon it. I would hardly go so far as to say, that if I had found those five learned persons coming to a clear opinion of a contrary description, and to an opposite construction, (and it is a question of construction.) I should not have hesitated very much in dissenting from that construction at which those learned persons had arrived. I should only have done it where I saw there was a plain and manifest, I might almost say, gross error made by them, but, at all events, a manifest and undoubted error committed by them, in having arrived at their conclusion. But here, on the contrary, I must entirely concur, not only in the conclusion at which the Court have arrived, but in the ground on which that conclusion is founded.

LORD ST. LEONARDS.—My Lords, it appears to me that the judgment of the Court below is in all respects right, and I should have felt a very confident opinion upon that subject, if it had not been for the view which has been expressed by my noble and learned friend on the woolsack, for whose opinion I need not say that I entertain the highest respect. It is only upon that ground that I hesitate to speak with very great confidence on a question upon which I have certainly formed a strong opinion.

My Lords, of these two companies, the Edinburgh and Glasgow Railway Company was in existence before the Stirling and Dunfermline Railway Company was thought of. The object of the company in existence was to get to the north, and they thought they could do so, being then, as I understand, in hopes of having the Scottish Central line, which has since got into other hands, and therefore they have been disappointed. They hoped, by means of their connection with the Scottish Central line, and with this new railway, to be able to reach the north, and to have also the benefit of the middle traffic. Now, for this purpose, the promoters of the new company and the old company joined in an application to parliament for an act of this nature, that the new company should form the projected railway and pay the expense of it, and that the old company, the existing company, should take a lease of that particular railway. And this act of parliament has this peculiarity in it, that whilst it talks of a lease being granted, in effect it does execute its own purpose, for it actually not only says that the property shall be held and enjoyed by the existing company, the Edinburgh and Glasgow, but it directs in so many words, that the railway shall be vested in that company as lessees. This, therefore, is not a case in which a lease is to be executed by one party to another of certain works, but it is a case in which the act of parliament itself has executed its own purpose, whatever be the construction of it, and has actually vested the property in the party who was to hold it for a certain term of years.

Now, we have had a very elaborate argument to shew to us, in the first place, that this act of parliament never can have effect as to vesting the property, unless in one of two cases—that is, either that the whole of the projected railway shall be completed, or that the new company shall elect (for that was the way in which it was originally argued by the appellants) to execute only a portion of it, in which case the appellants admit that they are bound by the lease which was conferred upon them, which was placed in them, in fact, by the act of parliament. In either of those cases, they admit that they are bound, but they say that they are not bound to take a portion; or they did say that they are not bound to take a portion, where it is intended to go on and complete the whole of the railway. Now, that is very capricious. If the new company chose only to go half way, the appellants admit that they are bound to take that half; but if the new company go half way, and intend to go the whole way, and are guilty of no delay, then the old company say that they are not to take the portion which has been executed, unless the whole of it is executed, and that the lease of it must be one term. Now, only observe for a moment the relation of these two parties, and the whole difficulty appears to me to vanish. The one party is to execute the works—the other party is to have the railway for a certain term, and to work that railway. Now, supposing that the new company had not intervened, what, then, would have been the operation? Why, the old company would have taken, of course, the works as they themselves finished those works, and they would have executed those works in a manner to enable them, as all railway companies do, to work a certain portion when it was completed—not waiting till the completion of the rest, but taking care in the interim to run from a point to a point which should be productive of a profit, and so give them funds with which to go on. If, therefore, this new company had not intervened, and if the old company, the Edinburgh and Glasgow Company, had both executed the works, and worked the railway, exactly the same thing, in all respects, without the slightest difference in point of fact, would have taken place, which

will take place under the decision of the Judges below—the works having been executed by one company, and the railway being to be worked by another.

But before we come to that, let us see for a moment what are the provisions of the act of parliament, and what would have happened if the contention of the appellants is right. This railway was completed for 13 miles from Dunfermline to Alloa, and that was a portion which clearly could be worked, and which has been worked. But observe what would have been the consequence. If the contention of the appellants is correct, they were not bound to take possession of that portion. Well, if they were not bound to take possession of that portion, what was to be done with the 13 miles of executed railway? Was there ever an absurdity equal to this, that those 13 miles of railway were to be thrown open to the world, and not to be protected? The party who had executed them would, upon the certificate of Mr. Miller, be absolved at once from all control over them, and the act of parliament has expressly given to the old company the necessary powers to carry on the works which have been so completed. The old company were bound from the time of that certificate, to keep that part in repair. That is sensible—that is right;—they were to keep the works in repair from that time, beyond any possibility of doubt. Then they were to have the benefit of it, and to take possession of it, and thus it would have been preserved, and have been worked, as the result has shewn. Now, observe what would happen in the way in which it is insisted that this thing should be done. We have heard a great deal about their being bound to take one term. In the first place, as I understood their argument, they desired that term to date from different times. Ultimately, in reply, they came to a different point—that is, they desired their term to run from the latest point at which the whole should be completed. But does the act of parliament justify that? And see what would be the result. You must take one term—the act of parliament throughout speaks of one term, and one term only, namely for 35 years. But, according to the argument which has been glanced at, and which was insisted upon at one time, that the term was to date for 35 years of the different portions of the railway as those portions were executed, see what the result would be—that at the end of those different terms, one portion of the railway would be in one company, and the other portion would be in the other. Now, take for example what has actually happened. The first portion is executed from Dunfermline up to Alloa Bay, that portion dating clearly, as it must, from Mr. Miller's certificate:—it would therefore revert, at the end of 35 years, to the new company. But supposing that the other part was afterwards executed, namely from Alloa up to Stirling, that would remain, according to what has been contended for at the bar, in the old company for 35 years from the period of its completion, and so, at the end of the term, half of the main line would be in one party, and the other half of the main line would be in the other party. Nothing could be a clearer contradiction of the terms and intention of this act of parliament.

Now, in the reply, that section of the first act was brought forward to which my noble and learned friend has directed his attention—namely, the provision in the act of parliament which says, that the main line shall not be open till the branches are ready to be opened at the same time. Why, look at what the clear intention was. You shall not get rid of those branches which are so much required, but you shall execute them as soon as you execute the whole of your main line, and are ready to open it. But the act of parliament did not say this, that when the branches were executed, they should not be opened till the main line was executed. And then your Lordships are asked to say what might have happened supposing this new company had executed the works of the main line before they had executed the branch lines; there might have been no profit, but the old company might have been compelled to take it. These two parties were to execute the railway, and work the railway as between them and the public, in effect as one company or partnership, you may say, in that respect, although their interests were distinct; and that exactly happened under the act of parliament, which would be supposed to be the natural consequence of it. As the branch railways might be worked before the main line was completed, whereas the main line could not be worked until the branches were completed, the branches were executed first, and were put into a state for working, and the main line was finished last.

Now, these observations would bring me, my Lords, to the consideration of what the real intention of this act of parliament was. The two companies were the promoters of that act, and they are both of course bound by it. I will not read those sections which have been read so often—indeed *usque ad nauseam*, so that I think I know them by heart. It is hardly necessary to refer to them here, but the result of them is, that when the railway is completed, the main line and branches, or when a part of them is completed, then the property, the whole or a part, shall vest in the old company for the term of 35 years, at a certain rent. What can be the construction of that but this? As regards a reasonable part, that must be open to a construction necessarily. There was a little difficulty about the rent, but the act of parliament itself expressly provides, that the time of payment of the rent, and the arrangements with regard to it, shall be in the discretion of the parties. It refers it, therefore, to their own discretion to settle that which it would be rather difficult to settle *ab ante* by act of parliament. But, as regards the rest, it seems to me to be the simplest of all simple things. As soon as a proper portion was completed,

it was to be taken by the old company, and the learned Judges below have put that construction upon the act which I think is the proper construction; and I still think, whatever character you may choose to look at Mr. Miller as filling, that the old company have taken care to guard themselves against any abuse by requiring a certificate from a person of their own nomination as to the completeness and propriety of the works, and the moneys expended upon the works. Mr. Miller is not only to certify to the propriety of the works executed, and their completeness, but he is also to certify as to the money expended upon them. They have every possible check, therefore. We need only see what has happened. When these 13 miles were executed to the satisfaction of Mr. Miller, and he had certified that satisfaction, the act of parliament, in spite of either company, and by its own force, would at once vest that completed portion in the old company, and the term would then commence. But there was an elaborate argument to shew that the other parts could not then vest. Why should not they vest as far as any interest was concerned? My Lords, supposing, as I have said, that the one company, the Edinburgh and Glasgow Company, had executed the works, and were to work the railway, what would have happened then? That as they acquired the land, it would vest in them—as they executed the works, they would be able to work them. And without there being any magic in all this, that precise state of circumstances will exist with only this difference, that the one company is to find the money and do the work, and the other company is to have the working afterwards of the railway when completed. So that, as the different properties are acquired, and the different portions of the line are completed, it vests by force of the act of parliament in the old railway company, and that vesting opens from time to time, if I may so express it, so as to let in the different parts till the whole railway is formed, and then it becomes vested in the old company. I do not see the slightest difficulty. It amounts to this, that as those parts are completed, and put into the possession of the old company, they shall vest in that company for that particular term, and I apprehend very clearly that the whole is one term. It does seem to me equally clear that that term is to date from the period of the 4th December 1850, when Mr. Miller made his certificate.

Now, in fact, the Court below has not made a decision upon this point, for the Court below has entirely confined itself to this, that the old company was bound to take the portion which was certified in the certificate of December 1850, and that the new company was bound to go on (for that is the effect of it) and complete the railway. Now, the appellants cannot complain of that. They want the completion of the railway of course—that is to say, they want to get rid of their contract. I know what they want perfectly, but they have no foundation for that, of course. What they must require would be the whole of the railway. Well, the Court below has given to them perhaps more than they were entitled to, because it has imposed a condition upon the respondents to go on and complete the railway. In that respect I think the Court below has gone further, if I may take the liberty of saying so, than the case warranted; but that does not lie in the mouth of the appellants. The appellants desired your Lordships to go through the whole of the evidence, but bringing not the real point before you upon which they raise the contention, to shew that every part of the land had not been bought at the time of the interlocutor below, necessary to complete the works. Now I must take the liberty, with deference to the Court below, of saying that, in my opinion, it was not necessary to shew any such state of things. The act of 1846 was an act between both parties. The act of 1848 was an act which was obtained by one party and submitted to by the other. I observed to your Lordships during the argument, that, in point of fact, the Edinburgh and Glasgow Company insisted upon this lease being granted to them in 1848, which the Stirling and Dunfermline Company desired to get rid of, and they brought in another bill in order to get rid of their liability to grant that lease. The Edinburgh and Glasgow Company then shewed pretty strongly, and contended that they were entitled to have that lease, and, in consequence of their opposition, that other bill was withdrawn. Up to that time, therefore, there was no contention as to the obligation. According to my apprehension, every term which was varied in that act of 1848 was as binding upon the one company as it was upon the other. The line was varied, but there was an express provision in the act of parliament that that varied line should have the same operation as if it had been authorized by the first act. Then, of course, the lease was to be likewise as varied, and not as the line was authorized by the first act. Then the lease was untouched in that respect, although it would operate in some respects on a line going in a different direction.

Now, there was a saving introduced in that act, which was manifestly for the purpose which I have pointed out, because the new company had endeavoured to obtain authority to put an end to the liability to lease the line to the old company. But, as I have before observed, that saving goes not only to the agreement, but to the act of 1846, and, therefore, that neutralizes and explains the saving, and renders it altogether inoperative as against the parties now before your Lordships.

Then comes the act of 1849. Now that act was strongly opposed by the old company; they insisted particularly that they ought to be released. They then changed their note; they desired then to be released from that lease, which they had insisted they ought to have when the bill of

1848 had been before parliament. Well, parliament decided against them, and the very first provision of that act of parliament of 1849, which has been so often referred to, is saving the rights not of the one company or of the other, but of both the companies—that is to say, the one shall have the power of making the railway, and the other shall have the power of working the railway when made, as altered by this act of parliament, notwithstanding anything which has taken place.

My Lords, I might go farther into this matter, but there is a reason why I should not occupy time. I am aware that in your Lordships' House at this moment other business is about to come on; but if I were to go through the acts of parliament, I could shew that every clause is consistent with the view which I have submitted to your Lordships, and that, in order to support a different view, you must cut down words of clear and strong import, and which admit of not the slightest doubt in their construction, whereas, if you adopt the view taken by the Court below, every word will have effect given to it—it will receive its natural construction, and the real intention of the legislature and the real intention of both these companies at starting, will be carried into effect, and the old company will not be permitted to evade their contract, as they desire to do, by refined arguments such as have been addressed to your Lordships. There are some other points into which it does not appear to me necessary to enter. I have already disposed of that as regards the terminus or junction at the station near the gas works, because certainly my opinion is, that whatever was the effect of the act of 1849, it was just as binding upon the company who was bound to take the lease, as it was upon the company who was bound to grant that lease. There are some points which I do not go into. There was one point which was a good deal pressed, with regard to the charge of interest in the shape of rent for the expenses of the act of parliament. It is quite clear that in the original summons that demand is made, and it is equally clear that in the answers and defences that demand is not resisted. After the interlocutor which decided the principal point in this case, the Lord Ordinary made a remit upon that very question; and although that interlocutor is appealed from, yet in point of fact no resistance was made to that interlocutor—it was neither resisted by the Edinburgh and Glasgow Company when it was made, nor was there any attempt to take it before the Division to which it might have been carried, or in any manner to get rid of it. That has been thrown in, therefore, now, as a make-weight, as is frequently done in cases of this sort, where parties are taking every possible objection; and I apprehend it is a little too late to enter into that question.

I entirely agree, therefore, with the opinion which has been expressed by the Court below. The only doubt which I have, as I at first expressed, is occasioned by the difference of opinion of my noble and learned friend on the woolsack; but it is very satisfactory to hear him say, that although he might have come to a different conclusion if he had sat in the Court below, yet he does not now speak with that confidence with which he probably would, had he been sitting below, in disagreeing with the opinion of that Court. I apprehend that the interlocutors complained of must be affirmed, and that as there were no grounds for this appeal, they should be affirmed with costs.

Mr. Rolt.—Perhaps your Lordships will permit me to say, with respect to costs, that the case of *Johnson* v. *Beattie*, 10 Cl. & F. 42, laid down the rule, that where there was a difference among your Lordships upon the question of affirming the decision of the Court below, it should not be affirmed with costs. At all events, that view was acted upon.

Mr. Solicitor-General.—But it might have been under different circumstances from this case.

LORD CHANCELLOR.—If we are to act upon anything of that sort, I should require further time to consider. I thought it my duty to express the opinion which I entertained; but the fact of the impression made upon my mind by the circumstances being different from that produced on the minds of my noble and learned friends, would certainly lead me to doubt whether my noble and learned friends may not be right.

Interlocutors affirmed with costs.

Second Division.—Richardson, Loch and Maclaurin, *Appellants' Solicitors.*—Deans and Rogers, *Respondents' Solicitors.*