# ASSESSMENT OF RAILWAYS. SOME OBSERVATIONS ON THE JUDGMENT DELITERED IN THE COURT OF QUEEN'S BENCH

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Assessment of Railways. Some observations on the Judgment delitered in the court of queen's bench by J. Fisher

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J. FISHER

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ASSESSMENT OF RAILWAYS.

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# SOME OBSERVATIONS

ON THE

# JUDGMENT

DELIVERED IN

# THE COURT OF QUEEN'S BENCH,

*On Saturday, the 18th of February,*

IN THE CASE OF

THE QUEEN *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

With an Appendix

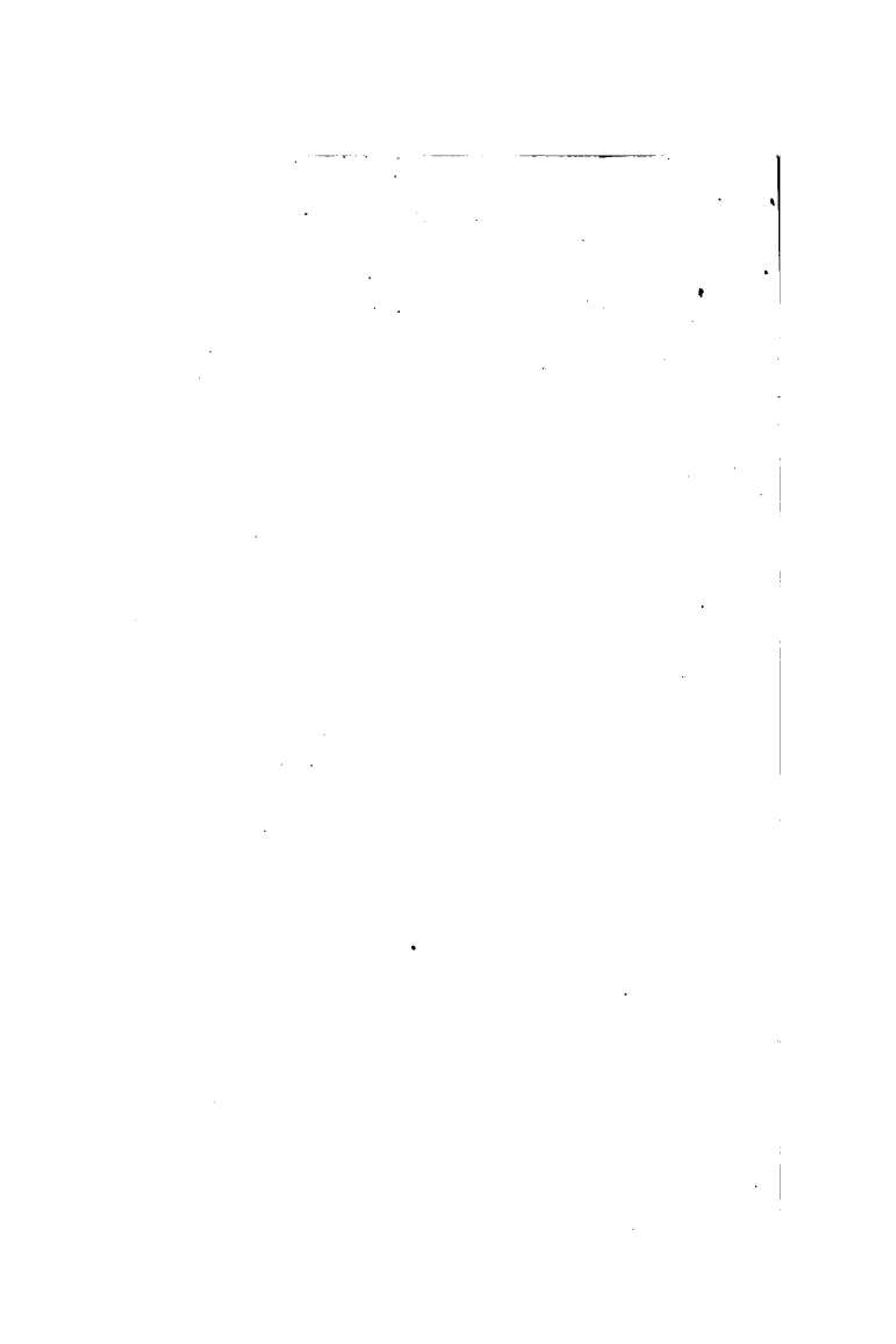
CONTAINING THE CASE AND JUDGMENT.

BY

J. FISHER,

OF THE GREAT WESTERN RAILWAY.

LONDON:
JAMES BIGG AND SONS, 53, PARLIAMENT STREET;
W. MAXWELL, 32, BELL YARD, LINCOLN'S-INN.
1854.
*Price Two Shillings.*



# OBSERVATIONS

ON

# THE JUDGMENT

IN

## THE QUEEN *v.* THE SOUTH-EASTERN RAILWAY COMPANY.

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THE difficulties by which the subject of the assessment of railways was supposed to be surrounded have certainly not been lessened by the Judgment which, in a divided court, the Judges of the Queen's Bench have delivered in this case.

The questions were three in number, though in effect but two, the second question put to the court being a combination of the first and third, and presenting only the alternatives of each, but no different inquiry.

The first question before the court was in substance this:—Is an annual payment, secured to be made over a long term of years, to be taken as conclusive evidence of such annual value as, by the Parochial Assessment Act, overseers are required to ascertain for the purpose of the assessment of the property in respect of which the payment is made?

The second question was, Whether the rate ought to be made irrespective of rent paid by the company, and of the value of the Reading and Reigate Line as increasing the traffic on the Main Line?

And the third question was, in fact, the alternative of the latter portion of the second, Whether the respondents were entitled to take into consideration, in their assessment, the value of the line to the appellants, as an integral part of the South-Eastern Railway, in addition to the net profit, as derived from the traffic passing through the parish of Dorking?

In answering the first question, the Judges, although somewhat

differing in their views, and in the strength with which they expressed them, arrived at a common conclusion, by which the law may be considered as decided; and it is so difficult to imagine four Judges arriving at any other opinion, that it is matter of surprise that the question should ever have been submitted to them; but as it is no uncommon thing to find overseers believing in, and acting on, the notion that rent paid is an absolute criterion of value, as a correct and legal decision upon the point, and as a settlement of a question leading frequently to differences and to appeals, the Judgment will be of great importance; more especially in those parts of the country where, from its mineral or manufacturing character, rateable property is of a speculative nature, and is often the subject of leases highly beneficial or the reverse. The value of this decision is, therefore, by no means confined to the particular property the assessment of which was the subject of the case before the court.

The assessment of the line in question *as an integral part*, (as the phrase has been understood,) of the South-Eastern Railway, is of course intended and expected to have some effect on the rateable value of the particular portion of property in question, as however the interference thus caused in the present mode of rating one constituent part of a railway must be met by some compensating alterations in the sums assessed elsewhere, the effect of the decision, therefore, on the actual money payment to the parishes will not, or ought not, to be material; but it is to be feared that it will open a new field for disagreement between railway companies and parishes where, perhaps, the assessment has been regarded as settled, and, as in many cases is the fact, where a tacit agreement to that effect exists, for which it will be difficult to find a remedy in Courts of Law, the question being of a nature, which the Court of Queen's Bench expressly say they cannot be called on to interfere in. It is this part of the Judgment, on account of the difficulties it creates, and the utter impossibilities which it requires to be performed, which it is the object of these remarks to bring before those who may be either instrumental or interested in getting it reviewed. Our objections then are not so much that

the effect will either increase or diminish the aggregate amount of assessment on railways, as that the attempt to solve a perfectly insoluble question will entail on each party much useless expense and trouble.

We do not understand the court to intend by its decision that the whole of a system of railways in the occupation of a Company, call them what we may—trunk lines, branch lines, or loop lines, leased, guaranteed, or amalgamated lines, are in effect to be assessed at more than their entire value, that is to say, more than the value at which they might be assessed if they were the subject of but a single assessment, such as in fact they are to the property and income tax; and the reference by one of the learned Judges to the relative interest of Amwell and Islington, and of the Chief Justice to a "deduction," shows, that whatever is to be given to one class of parishes, is intended should be surrendered by the other. It will not be contended by parish officers that the sum of the value of the separate parts is greater than the value of the whole, and it becomes, therefore, only a question of division, of apportionment; and, although, it appears by the Judgment, that certain parts are be assessed at all they are worth by the modes which are to be applied to other parts, that is, on an estimate of rental to be ascertained from the net earnings in the parish, and that then something else is to be added as a value which these parts confer on or cause to arise out of the other parts, namely, their supposed value as feeders, it must follow of necessity, that a corresponding and equivalent reduction of rateable value is somewhere to be found, and of right that such reduction is somewhere to be made.

Now what are the distinctive features which are to mark the parts to give and the parts to receive? The former, in language not very precise, are called "Branches," the latter "Main Line," and by a metaphor, as was said by a learned Judge, the former are called "Feeders;" no corresponding term has as yet been applied to what must, to sustain this figure, be regarded as the recipient portions of the line, but it is clear that a receiving character must be supposed to belong to them.

The use of these terms in the Judgment seems to us the foundation upon which its fallacy rests, the arguments deal with these words rather than with things.

We have said that the terms employed to designate these two kinds, if two kinds they be, of railways, are not precise in their meaning; might it not be said that they are utterly undefinable —what is a branch? what is not a feeder? Branch lines (to give as nearly as possible what we conceive to be a popular notion of them) are those which run out of other lines, and which have been made not so much for the local traffic existing or to be called into existence upon them, as for the ultimate profit to be derived by the occupiers of the line in conjunction with which they are made, by the accession of traffic on to rails already laid, and into carriages already running; but will such a descriptive definition as this meet and settle the claims which parish officers will set up to have particular railways considered as belonging to the class "feeders," or of Companies to be allowed reductions on lines of the other kind? Where will the receivers be found admitting themselves to be of that exclusive character? Where are the parish officers who will say we are indebted for the traffic through our parish in part to a line in this county, and in part to a line in another? and although 6,000*l.* a mile is annually carried in our parish, at an expense of 3,000*l.*, we are not entitled to regard the 2,000*l.* as net earnings there, because some of that traffic was produced by the making of another piece of railway fifty miles away, and which traffic would not have passed through our parish if that line had not been made? It will not be difficult to find the "feeders," but who will confess themselves to be solely "receivers?"

It is clear that a branch railway must be defined, and a main line or trunk line must be defined also, if the mode hitherto acted upon, of taking as the basis of parochial value parochial earnings be broken in upon; and that of taking somewhat more in one case, and somewhat less in another, be legalised; there must be a legal distinction discernible, if possible, by parish officers, and certainly by magistrates; and for this legal distinc-

tion we must look, if any where, to the Court of Queen's Bench, before we employ an "accountant;" and, considering who will be interested in, and entitled to act upon it, or to dispute it, it should be definite and clear.

The case states that "the Reading, Guildford and Reigate Line brought a great deal of *additional* traffic to the Main Line of the South-Eastern Railway Company, and the latter Company thus derived benefit from the Reading, Guildford and Reigate Line, as a feeder to the Main Line, in respect of traffic conveyed upon that line."

It is obvious, from the use of the very loose expression "a great deal," that the framers of the case experienced the difficulty which, we think, always must occur, and which it will be impossible to surmount, when any practical approximation to the amount of such *additional* traffic is attempted to be ascertained.

The overseers of one parish and the magistrates of one division or county may say this or that line feeds another, and those interested in, or called on to decide in the reciprocal cases, will come to that conclusion which is most in favour of their own line; and why not? when all is reciprocity—all is interchange; when feeding, and being fed, are the processes universally in action. And yet there will be no tribunal to which the Railway Companies may go to escape from under the harrow of this litigation.

With the single desire to prevent what it seems this Judgment will cause, a new mass of litigation before the most unsatisfactory tribunals, we would endeavour to find some criterion to act upon in distinguishing between the two species of lines of Railway referred to; but at every attempt we are taught more and more that the apparent difficulty is an impossibility. We turn to the London and North-Western Line; the line to Birmingham may be the main line by priority of existence, but the line through the Trent Valley to Crewe, by majority of traffic; the line on to Liverpool may be main line, because it was part of the original and independent Grand Junction, or it may be a branch, like those to Chester and to Manchester, or it may be a "feeder" to that parent of all lines, the Liverpool and Manchester; but while the