ships, to authorise him to apply to Parliament for an Act or Acts authorising the sale of the line, or otherwise for an Act or Acts authorising him to raise capital to an extent not exceeding £20,000 by the issue of debentures, which shall rank preferably, both as regards principal and interest, to the debentures already issued or authorised under the Girvan Company's existing Acts of Parliament."

The Girvan and Portpatrick Company lodged answers, in which they craved the Court to give effect to, *inter alia*, the following considerations:—"*First*, That it is not expedient in the interests either of the shareholders, the debentureholders, or the public that the line should be closed; *Second*, That as an agreement was offered by the Glasgow and South-Western Company to work the line for six years on terms which would be a great improvement in favour of the Girvan Company to that under which the line is at present wrought, and which would secure payment to the Portpatrick Company of the interest on the half of the cost of the Stranraer Section and the East Pier, and would also secure to the company any profit which might arise after payment of the working expenses, the Court should be moved to take the matter into its consideration, and instruct the factor to make such arrangements as will keep the line open until an offer of purchase is submitted to the Court; . . . . *Fourth*, That the Court has no power to make any sum of from £15,000 to £20,000, proposed to be raised by the factor for the purpose of equipping the line and enabling him to work it independent of the Glasgow and South-Western, a preferable charge to the debenture stock of the Company on the preference shares; *Fifth*, That the Court has no power to authorise the judicial factor to apply to Parliament to make that sum preferable, or to sell the line, to the effect of throwing the burden of the cost of such an Act either upon the company or the debenture-holders." It was further stated at the bar by the Girvan and Portpatrick Company that the Glasgow and South-Western Company were willing to enter into another interim arrangement for six months for the working of the Girvan line similar to that then in force.

At advising—

Lord President—The note for the judicial factor in this case prays the Court "to authorise the judicial factor to enter into negotiations for the sale of the line, and to receive offers for the purchase thereof; and thereafter, upon consideration of the result of the said negotiations and the offers received by the judicial factor, as reported by him to your Lordships, to authorise him to apply to Parliament for an Act or Acts authorising the sale of the line, or otherwise for an Act or Acts authorising him to raise capital to an extent not exceeding £20,000" for the purpose of working the line. Now, all that is proposed at present is that the first part of that prayer should be granted, viz., that the factor should have authority to enter into negotiations for the sale of the line, and to receive offers for its purchase. I confess I do not think it at all necessary that the factor should have any special authority to enter into such negotiations. On the contrary, I think they fall very naturally and properly within the scope of his powers as judicial factor. Of course, before any concluded arrangement can be made, he must report to the Court and obtain their sanction to apply for an Act which would certainly be necessary in order to enable him ultimately to sell the line. And therefore, in so far as what is at present asked for by the factor is concerned, I am disposed not to grant it, as being unnecessary. But it is suggested on the other side by the directors of the line, who are susperseded in the management, but still represent the corporation, that the proposal or suggestion of Mr Haldane that the line should not be any longer worked by the Glasgow and South-Western Railway after the 31st of this month, is a very inexpedient thing for the sake of the company and the public; and they say that the Glasgow and South-Western Company are willing to continue to work the line for another temporary period of six months or so while these negotiations are going on. I think it is much to be regretted that that proposal was not made to the factor, the only person who had any power to entertain or listen to it. But now that it is made, I have no doubt that the factor will give due consideration to it. The only communication that the Glasgow and South-Western Company have made to him as yet seems to me to be a proposal to renew for a period of six years the previously existing working agreement, or something very like it; and that proposal I think the factor was very well advised in declining. But that it may be expedient to enter into a reasonable arrangement for working this line for six months more while these negotiations are going on is, I think, a very proper subject for the consideration of the judicial factor, and in his hands I think your Lordships should leave it.

Lord Deas, Lord Mure, and Lord Shand concurred.

The Court did not pronounce any order.

Counsel for Judicial Factor—D.-F. Kinnear, Q.C.—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Railway Company—Mackintosh—J. P. B. Robertson. Agents—Millar, Robson, & Innes, S.S.C.

Wednesday, July 20.

FIRST DIVISION.

DUKE OF MONTROSE, PETITIONER.

Process—Petition—27 and 28 Vict. c. 114 (Improvement of Land Act 1864), sec. 21—Remit to the Lord Ordinary on Bills during Vacation.

The Improvement of Land Act 1864 provides (sec. 21) that "if the landowner . . . shall be the father of the person or persons entitled, either at law or in equity, to any estate in the land to be improved, or any part thereof, in reversion or remainder, . . . and such person or persons, or any of them, shall be an infant or infants, or a minor or minors, the landowner desiring such improvements may apply, . . . as to lands in Scotland, to either

Division of the Court of Session in time of session, or to the Lord Ordinary sitting on Bills in time of vacation, by summary petition, and the Court or single Judge, as the case may be, to whom such application shall be made, shall hear and determine such application, and for that purpose shall have power to make or direct to be made all such inquiries, and receive and entertain all such statements and evidence on oath or by affidavit, as such Court or Judge may consider necessary or desirable, or as may be produced before them or him; and if upon a consideration of all the circumstances, such Court or Judge shall be of opinion that the commissioners should entertain and proceed upon such application, an order shall be made authorising and requiring them to proceed thereon, and to deal with the same according to the provisions of this Act authorising them in that behalf, notwithstanding such . . . circumstances as aforesaid." An heir of entail in possession of estates to which his two pupil children were next heirs after him, presented a petition to the Court for authority to proceed with an application under the said Act to charge the said estates with £8000. The Court ordered intimation and service on the three next heirs of entail, and remitted to the Lord Ordinary on the Bills to proceed with the petition during vacation.

Counsel for Petitioner — Dundas. Agents—Dundas & Wilson, C.S.

Wednesday, July 20.

SECOND DIVISION.

[Sheriff of Lanarkshire.

CLAPPERTON, PATON, & COMPANY *v.* ANDERSON.

Cautionary Obligation—1696, *c.* 25—*Act* 19 *and* 20 *Vict. c.* 60 (*Mercantile Law Amendment Act (Scotland)* 1856), *sec.* 6—*Creditor in Obligation not Named.*

A cautionary obligation for payment of instalments of composition by a debtor named and designed is not void by reason of the grantees not being named, it being plain from the terms of the writ who they were.

Todd & M'Laren, drapers, Lanark, suspended payment in November 1876. Their largest creditors were Clapperton, Paton, & Company, Glasgow, to whom they were indebted in the sum of £797, 13s. 3d. Mr Tolmie, accountant in Glasgow, prepared for the creditors a state of affairs. Thereafter the creditors accepted an offer of composition of 15s. per £1 on their respective debts, to be paid by James S. M'Laren, the other partner J. S. Todd being allowed to retire from the concern. The composition was to be paid by four equal instalments at three, six, nine, and twelve months from 15th December 1876. For the last of these instalments John M'Laren, Donald M'Laren, and Adam Anderson, the defender in this action, agreed to become cautioners, the liability of Anderson being restricted to £135. The cautionary obligation was in these terms—"We, John M'Laren, farmer, Ballindalloch, Comrie, Perthshire, Donald M'Laren, cattle dealer, Colinsburgh, Fife, and Adam Anderson, travelling draper, 47 Castlegate, Lanark, hereby agree to become jointly and severally sureties for payment of the last of four instalments of a composition of fifteen shillings per pound offered by James S. M'Laren on the debts due by his firm of Todd & M'Laren, drapers, Lanark, said instalments being payable at three, six, nine, and twelve months from 15th December 1876; moneys to be lodged by him fortnightly, for behoof of the creditors, to meet the several instalments as they fall due; Mr John S. Todd, his partner, to retire from the firm without consideration, he receiving his discharge under the composition settlement; but the subscriber Adam Anderson hereby restricts his liability under this obligation to the sum of One hundred and thirty-five pounds and no more." M'Laren failed to pay the instalments as agreed on, except the first, and this action was raised against Anderson as being liable under the obligation just quoted. The petition concluded for £49, 11s. 8d., as the proportion of the sum of £135 secured by the defender to which the pursuers were entitled in respect of the last instalment of composition on their debt, amounting to £149, 11s. 3d. The defender averred that it was the duty of the creditors, and of Mr Tolmie as acting on their behalf, to insist on M'Laren's punctually lodging fortnightly instalments to meet the instalments of composition and that he had relied and was entitled to rely on their doing so, but that they had neglected to fulfil this condition of the obligation. He pleaded that he was therefore freed from his obligation; also that the cautionary obligation was defective and insufficient.

The Sheriff-Substitute (GUTHRIE) pronounced this interlocutor—"Finds that by agreement, dated 18th December 1876, the defender guaranteed to the creditors of Todd & M'Laren, drapers, Lanark, to the extent of £135, that James S. M'Laren would pay the last instalment of a composition of fifteen shillings per pound to them, due upon 15th December 1877: Finds that James S. M'Laren failed to pay the instalments of the said composition, and that consequently his estates were sequestrated on August 24, 1877: Finds that the last instalment of said composition is still unpaid; and that the sum sued for is the proportion of the pursuers' share thereof corresponding to the said sum of £135: Finds that the defender has failed to instruct any fault or omission on the part of the pursuers of such a nature as to discharge him from his liability under the said guarantee: Therefore repels the defences and decerns as craved," &c. With this note—. . . . . "The guarantee is in favour of 'the creditors' of a party named, and I think it does not fall within the terms or the intention of the statute anent blank writs. There is a description of the grantees in which *constat de personis*, and that is all that the law requires—Ersk. iii., 2-6."

The Sheriff (CLARK) adhered on appeal.

The defender appealed to the Court of Session, and argued—The cautionary obligation founded on was not addressed to anyone. The party entitled to found on such an obligation must be named in it. Or if there were a number of such persons, a trustee for them must at least be named. The Mercantile Law Amendment Act,