

craved, and *quoad ultra* continued the petition in order that as each of the pupil petitioners attained minority application might be made under the same petition to have the factor appointed *curator bonis* to them.

Counsel for Petitioners—Dundas. Agents—Mackenzie & Black, W.S.

Saturday, March 18.

## SECOND DIVISION.

[Lord Rutherford Clark,  
Ordinary.

GLASGOW & SOUTH - WESTERN RAILWAY  
COMPANY v. CALEDONIAN RAILWAY  
COMPANY.

*Property — Railway — Joint-Ownership — Servitude — Right to Arches supporting High-Level Station.*

A railway company being empowered by statute to take for its own purposes part of a station belonging jointly to themselves and another company, and being ordained to give in substitution therefor certain other ground, on which they were to build a station for the joint use of themselves and the other company, the station when constructed to vest jointly in the two companies, and the company having purchased ground for that purpose from third parties, and erected shops in the hollows of the arches on which the station was supported, were held to have fulfilled their statutory duty by giving the surface use of the ground above for station purposes, and the statutory vesting of the station in the companies jointly was held not to involve a joint title of property in the arches and shops below.

The pursuers and defenders were joint owners of the line of railway known as the Glasgow and Paisley Joint Line, which has its northern terminus at Bridge Street Station, Glasgow. By The Caledonian Railway, Gordon Street Station, Act 1873, the defenders obtained power to construct a passenger station adjacent to Gordon Street, Glasgow, and certain lines of railway (including a bridge across the Clyde) in connection therewith. By The Caledonian Railway, Gordon Street Station Connecting Lines, Act 1875, the lines of railway authorised by the first-mentioned Act were more or less deviated and altered, and, *inter alia*, power was conferred on the defenders to take and occupy for the purposes of one of their lines (line No. 1) the eastern portion of Bridge Street Station belonging jointly to the two companies. By section 4 of the said Act of 1875 the defenders took power to construct, *inter alia* . . . 3. A railway (in this Act called 'line No. 3') one furlong four chains and eight yards or thereabouts in length, with sidings, platforms, and other works, in substitution for these portions of the said Bridge Street Station, and of the joint line in and near that station, belonging to the two companies, which will be taken, removed, or otherwise interfered with for the purposes of this Act, the termini of this line being fixed by the Act." By section 26 of the same Act the Caledonian Company were to remove Bridge Street

Station at their own expense, on a plan to be agreed on by their respective engineers, or failing agreement by an engineer to be appointed by the Board of Trade on the applications of either company. This section then proceeds—"And such engineer shall have power to order the company to execute such extension of the said station to the westward under the powers of this Act as he may consider necessary for efficiently and conveniently accommodating the passenger traffic requiring to use that station, having regard not only to the present but to the future exigencies of such traffic: Provided always that in so far as such remodelling, improvement, and extension are made on the lands of the two companies, such lands shall be given for that purpose free of cost to the company, and that in fixing the amount of compensation to be paid by the company to the two companies for any injury occasioned to the said Bridge Street Station by the exercise of the powers of this Act as respects line No. 1, the arbiter, arbiters, oversman, or jury shall take into consideration the station accommodation to be provided by the company for the two companies under the provisions of this Act: Provided also that such remodelling and improvement shall be proceeded with simultaneously with the construction of line No. 1, and that line No. 1 shall not be opened throughout for traffic until such remodelling and improvement is completed." Section 37 provided as follows:—"Those portions of the Bridge Street Station at Glasgow, and of the joint line in and near that station, lying between Wallace Street and the north end of the said station, which under the provisions of this Act are taken, removed, or otherwise interfered with for the purposes of line No. 1, line No. 2, and line No. 3, and the works connected therewith respectively, shall, from and after the time when the same are so taken, removed, or interfered with, be abandoned; and in lieu thereof line 3 and the works connected therewith shall, as respects tolls, rates, and charges, and in all other respects, form part of the joint line, and be vested in the two companies jointly, and be managed by the joint committee of directors of those companies known as the Glasgow and Paisley Joint Line Committee, as part of the joint line."

In pursuance of these enactments plans were, with the assistance of an engineer appointed by the Board of Trade, ultimately adjusted between the engineers of the two companies, and in great measure carried out. The larger part of the ground required was given free by the two companies, and the rest purchased by the Caledonian Company from third parties. The station was a high-level one supported on arches. The pursuers asserted that it had been agreed between the companies that shops should be formed in the hollows of the arches which supported the station, and let to produce rent for the profit of the joint line.

The defenders, while admitting this to be the case with the shops formed on the ground given by the two companies and executed at joint expense, denied that it was so with the shops on that part of the ground which had been acquired by them from third parties, which shops had been executed solely at their (the defenders') own expense. The defenders contended that their obligation to provide a remodelled, improved, and extended station was satisfied upon completing

and handing over to the joint line a station on the level of the line of railway with the arches and shops, so far as constructed on the land which formerly belonged to the two companies jointly, and that the arches and shops under the station which had been formed on the land purchased from third parties belonged to the defenders, and did not vest in the two companies jointly under the 37th section of the Act of 1875. The pursuers, on the other hand, contended that the powers of the Caledonian Company to acquire the land in question were only given for the purposes of the line No. 3, and for the construction of works thereon in connection with that railway, and that the *solum* of the archways, and also the *solum* upon which the piers had been built, vested in the two companies jointly, in terms of the 37th section, as a part of line No. 3 and the works connected therewith. The defenders impugned the accuracy of certain plans on which the pursuers founded. Proof was allowed, and the only witnesses examined were the engineers of the two companies.

The pursuers pleaded that the arches and shops in question formed part of the joint line station, and were vested in both parties jointly as joint owners of the station and joint line. The defenders pleaded that the arches and shops, along with the ground on which they were built, belonged exclusively to them, and inasmuch as they were no part of the works of the railway, that the only joint right of the two companies in the ground was one of servitude of maintaining and using the line constructed above them.

The Lord Ordinary found that "the ground acquired by the defenders for the construction of line No. 3, and the arches and shops constructed or to be constructed thereon, do not belong in property to the pursuers and defenders, and that the pursuers are not entitled to participate in the rents and profits derived or to be derived from the said shops;" and to this extent assoilzied the defenders, "but reserving to the pursuers all claims which may be competent to them in the event of said ground or arches being used or required for railway purposes."

The pursuers reclaimed, and argued—The land under or above a line of railway is as much part of it as the part on which the rails are laid. The ground in question here is not "superfluous land," which might be sold. "Superfluous land" must be separable from that which is not superfluous by a vertical not a horizontal line, for railway land belongs to a railway company, as to any other proprietor, *a celo ad centrum*. This case differs from that of merely acquiring a servitude, as is frequently done for a tunnel or viaduct, for here the *solum* of the ground has been acquired. It is clear from section 37 of the Act that a full right of property in line No 3 was intended to vest in the joint line.

The defenders argued—The pursuers' case turns on section 37, which must be read so as to give only a right of servitude to the joint line, and not to vest in them a right of property in the ground. All the defenders are bound to give in satisfaction of their statutory duty is surface use.

Authorities—*Mulliner v. The Midland Railway Co.*, 11 Chan. Div. 611; *Metropolitan District Railway Co. v. Cosh*, 13 Chan. Div. 607.

At advising—

Lord Young—The question in controversy here is very distinctly stated in the last article of the condescence; and the facts and statutory enactments which raise it are set forth in the preceding article. I need not therefore preface my opinion with any narrative. I assume that the Caledonian Railway Company have fulfilled the conditions on which they were empowered to take and appropriate a slice of ground cut off the east side of Bridge Street Station of the Glasgow and Paisley Joint Line; and that the station as it now exists,—remodelled, improved, and extended westward to Commerce Street,—is in all respects such as the Caledonian Company were required to provide. I further assume that it is part of the joint line, and as such is vested in the two companies jointly to whom the joint line belongs, and is under the management of the joint committee. It is so in terms enacted by the Act of 1875, and I think I should have implied it without the enactment. The two companies who own the joint line and are the creditors in the Caledonian Company's obligation, as the parties in whose favour it was imposed, are accordingly satisfied, and neither they nor their joint committee make any complaint. Nor do they ask for any declarator of property—which would be superfluous with respect to the ground to which they have a title of property granted to them by the previous owners from whom they acquired it, being all the ground referred to in the conclusion of the action except the comparatively small piece recently acquired by the Caledonian Company on a property title in their favour. This piece was undoubtedly acquired by the Caledonian Company for the purpose of extending the station under their statutory obligation, and it has been so used accordingly, for to the extent of it the station, which is high-level, overhangs it, and is supported on pillars and arches built on it. To that use it is without doubt permanently subject, and the two companies, as owners of the joint line of which the station is a part, would have a clear right to complain of and stop any use whatever inconsistent therewith. With this the two companies are content, and they accordingly assert no right of property in the ground. But the Glasgow and South-Western Railway Company, desiring to be joint adventurers with the Caledonian Company in the shops which the latter have erected on this ground between the piers, in the hollow recesses under the arches, assert that the property of the ground is in the two companies as owners of the joint line; and offering—as their counsel did for them at the bar—to bear their share of the cost of erecting the shops, maintain that the adventure is legally that of the two companies, and to their common profit or loss, for of course it may be either. I do not question the title of the pursuers to assert the right of property in the two companies jointly, or doubt that ground belonging to a railway company while temporarily unoccupied, not being immediately required for railway purposes, may be let and so turned to profit. But an adventure in shop-building, involving, as we are assured this does, a large outlay of money, is another matter, and I should hesitate—I do not desire to say more—to adjudicate about such an adventure in a dispute thereanent between two companies neither of which, so far as I can see, has any right to engage in it. I do not pursue

this topic, the opinion which I have on the question of property being sufficient for the decision of the case. My opinion is that the Caledonian Company having a recorded title of property to the ground in question, or a right to receive it from the persons from whom they purchased, are the proprietors, and that their statutory obligation does not require them to transfer the property to the two companies. I have already stated, or sufficiently indicated, that in my opinion that obligation was performed by using their ground to support that part of the station which they erected over it. This support they will never be permitted to withdraw, or to interfere with in any way prejudicially; and the statute did not require them to provide the two companies as owners of the joint line with ground in common on which they might erect shops as a speculative adventure.

It is, perhaps, proper to say that I think the question is not affected by the circumstance that the company on whom the statutory obligation was imposed was one of the two companies in whose favour it was imposed. It would in my opinion have been the same had the obligation been put upon a third company, or even on an individual, as the condition or price of some benefit accorded.

I have said enough to signify that in my opinion the statutory vesting of the station in the two companies does not imply a title of property in the ground over which the station is elevated, and by which it is supported. To a large extent lines of railway, and sometimes, as here, railway stations, are constructed on viaducts and bridges, and in all or most of these cases the vesting of the lines and stations in the companies implies no property in the ground over which they are carried and by which they are supported. The thing vested is the line or station, and not the ground supporting it, beyond the right to support which is all that is needed.

With respect to the reservation in the Lord Ordinary's interlocutor, my only objection to it is that there is no suggestion on the record of the probability or even the possibility of station accommodation being required on the ground level—not the station level but the ground level,—that is, on the level of Commerce Street. The obligation put by the statute on the defenders is to extend, improve, and remodel a high-level station, the level being already fixed. It seems to me analogous to an obligation to widen an existing bridge or viaduct, which would not suggest to my mind the notion of providing in any event whatever storage or other accommodation underneath. Accordingly the pursuers say nothing on record of any use for railway purposes now or hereafter, but put their claim distinctly and exclusively on an alleged right to share in the shop-building adventure. I should therefore rather prefer to omit the reservation. In other respects I concur in the Lord Ordinary's views and judgment.

**LORD JUSTICE-CLERK**—As regards the reservation, I think it should not be inserted.

**LORD RUTHERFURD CLARK**—I rather thought that the proposal to reserve came from the Caledonian Company.

**LORD CRAIGHILL** concurred.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Mackintosh—Robertson. Agent—John Clerk Brodie & Sons, W.S.

Counsel for Defenders (Respondents)—Johnstone—Pearson. Agents—Hope, Mann, & Kirk, W.S.

Saturday, March 18.

## SECOND DIVISION.

[Lord Rutherford Clark,  
Ordinary.

GORDON'S TRUSTEES v. GORDON OR SCOTT  
AND OTHERS.

*Trust—Trustee—Personal Liability for Omissions—Culpa lata.*

Testamentary trustees having appointed one of their own number as factor, and carefully superintended his proceedings for a number of years until the major part of the purposes of the trust were fulfilled, instructed him to bring an action of multiplepounding for their exoneration and discharge. This process remained in Court for a number of years, during which time the factor rendered his accounts, not to the trustees, who ceased to take any active part in the management of the trust, but to the agents for the beneficiaries. During this period the factor began and continued a practice of keeping in his hands, uninvested, and mixed up with his own funds, a large balance of trust-funds. This sum he regularly stated in the accounts, and the beneficiaries received interest on it at 4 per cent. After some years he became bankrupt. *Held* that the trustees had been guilty of *culpa lata* by their omission to superintend the actings of the factor, and that they were therefore liable to make good to the beneficiaries the sum which had been lost by his insolvency.

Francis Gordon of Kincardine died in 1857. He left a trust-disposition and settlement whereby he appointed certain gentlemen to be his trustees, among the number being Mr Alexander Simpson, advocate in Aberdeen, and afterwards Procurator-Fiscal of Aberdeenshire. Mr Simpson acted as factor for the trust, and his firm of Simpson & Cadenhead as law-agents for the trust. Mr Gordon left a widow and a son and daughter. The latter succeeded to the entailed estate of Craig, which did not fall under the trust-deed. She afterwards married, and became Mrs Johnstone Gordon. The trust was chiefly intended for the maintenance of the son Mr James Gordon, who received under it the liferent of the estate of Kincardine. The widow had by her marriage-contract an annuity of £400. The duties of the trustees were to manage the investments of the personal estate and the estate of Kincardine. The trust-deed contained a clause declaring that the trustees "shall not be liable for omissions, errors, or neglect of management, nor *singuli in solidum*, nor for the solvency of those to whom they may lend the moneys under their management, further than that the person or persons to whom they may so lend are habit