

Tuesday, March 14.

FIRST DIVISION.

[Lord Pearson, Ordinary.]

INGLIS v. CALEDONIAN RAILWAY
 COMPANY AND OTHERS.

Railway — Lands Clauses Consolidation (Scotland) Act (8 Vict. cap. 19), secs. 67, 68, and 79—Entail—Petition to Acquire Money in Fee-Simple—Expenses.

Where part of the compensation money for lands taken by the promoters of an undertaking from an heir of entail in possession had been invested in consols in the name of trustees, held that the promoters were liable in the expenses of an application presented by the heir in possession to acquire the money in fee-simple, including the expense of the transfer of the stock by the trustees to him, and of a discharge by him to the trustees.

This was a petition presented by John Alexander Inglis, heir of entail in possession of Auchindinny and Redhall, for authority, *inter alia*, to acquire in fee-simple two sums of £481, 13s. 3d. and £1787, 15s. 6d. consolidated stock of the United Kingdom. The application was presented under sections 2 and 26 of the Entail Amendment Act 1868 (11 and 12 Vict. cap. 36). The petitioner also craved the Court to find the Caledonian Railway Company and the Water of Leith Commissioners liable in the expenses of the application.

The sums in question represented the balance of the compensation money paid to the preceding heir of entail for certain lands compulsorily acquired from him by the Caledonian Railway Company and the Water of Leith Purification and Sewerage Commissioners. They were invested in consols, and held in trust for the behoof of the petitioner and his successors under a declaration of trust executed under the authority of the Court obtained in an application by the petitioner's father and predecessor in the entailed estates. The expenses of these applications had been paid by the Railway Company and the Water of Leith Commissioners.

The Lands Clauses Consolidation (Scotland) Act 1845 (8 Vict. cap. 19), sec. 67, enacts that the purchase or compensation money payable to parties under disability shall be paid into bank to the intent that it shall be applied under the authority of the Court to some one or more of the following purposes, viz., in the discharge of any debt or incumbrance affecting the land taken; in the purchase of lands; or in payment to any party becoming absolutely entitled to such money.

Section 68 — "Such money may be so applied as aforesaid upon an order of the Court of Session made on the petition of the party who would have been entitled to the rents and profits of the land in respect of which such money shall have been depos-

ited; and until the money can be so applied it shall be retained in the bank at interest, or shall be laid out and invested in the public funds or in heritable securities."

Section 79 empowers the Court to order the expenses of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking, viz., "the expense of the purchase or taking of the lands . . . and the expenses of the investment of such moneys in Government or real securities, and of the re-investment thereof in the purchase of other lands, and of re-entailing any of such lands . . . and of the orders . . . for the payment of the principal of such moneys . . . and of all proceedings relating thereto . . . provided always that the expense of one application only for the re-investment in land shall be allowed."

On 14th February 1899 the Lord Ordinary (PEARSON) granted warrant to and authorised the petitioner to acquire in fee-simple the stocks in question, and to the trustees under the declarations in trust to execute the necessary transfers of stock to the petitioner on the petitioner granting them a valid discharge of their whole actings and intromissions as trustees; and found the Water of Leith Commissioners and the Caledonian Railway Company "liable equally between them in the expenses of the petition and the proceedings following thereon, so far as these expenses are applicable to the obtaining of authority to acquire the said stocks in fee-simple, and also the whole expenses of the said transfers in favour of the petitioner, and the discharge or discharges to be granted by the petitioner in terms of this interlocutor, including the expense of recording the said discharge or discharges in the Books of Council and Session."

The Railway Company and the Water of Leith Commissioners reclaimed, and argued — The Lord Ordinary was wrong in finding them liable in the expenses of this application. The petition to acquire the money in fee-simple was simply a petition to disentail; it was not an application under the Lands Clauses Acts at all. There was a distinction between petitions to disentail and petitions to uplift consigned money — *Torphichen v. Caledonian Railway Company*, July 19, 1851, 13 D. 1400; *Countess of Stair*, May 20, 1882, 19 S.L.R. 618; *Stirling Stuart v. Caledonian Railway Company*, July 8, 1893, 20 R. 932. The money here had got beyond the stage of being deposited in bank. The investment in consols might at first have been temporary, but the present application was the best proof that the petitioner regarded it as permanent. If indeed the petitioner proposed to invest the money in lands the company and the Commissioners might be liable. But what he proposed was tantamount to asking them to pay the expenses of an application to disentail after the money had been permanently reinvested in the purchase of lands. The respondents would not be liable to defray such expenses.

The petitioner's argument sufficiently appears from the Lord President's opinion.

Cases referred to and distinguished—*Pollok v. Glasgow Water-Works Commissioners*, March 5, 1869, 41 S.J. 325; *City of Glasgow Union Railway v. Glover*, November 23, 1870, 8 S.L.R. 147.

LORD PRESIDENT—The theory of the sections of the Lands Clauses Act which we have to consider is, that moneys paid as compensation for land taken from persons having limited interests or prevented from treating will ultimately be applied to clearing off burdens on land or be invested in land, except in the case of any person who becomes entitled to payment of them absolutely, and in that case they may reach his hands in the form of money. It is not disputed that the petitioner is entitled to payment of the money now in question absolutely. A person so situated is entitled under the statutes to get from the undertakers the expense of an application necessary to obtain such payment. Now, it cannot be disputed that the present petition was necessary, in the situation in which the money stood at its date, in order to the petitioner obtaining such absolute payment, and that it brings about that result. *Prima facie*, therefore, the petitioner would seem entitled to these expenses. The respondent's argument against the claim is rested on the previous proceeding. Now, in the previous proceeding the money was invested and placed in trust for the heirs of what was then the existing entail. Inasmuch, then, as the money was not, as the result of the previous proceeding, invested in land or applied to reducing debt, and was not paid over to anyone absolutely, it seems to me that it was one of these intermediate and temporary investments which are contemplated by section 68 of the Act, and I think it fell within the proceedings authorised for that purpose. It must have been upon this footing that the respondents submitted to be found liable for the expense of that proceeding, for otherwise there was no warrant in the statute for fixing them with such liability.

I am therefore of opinion that the respondents are liable for the expense of this application in so far as it relates to obtaining payment of the moneys in question. The petitioner's counsel seemed to consider that the terms of the interlocutor were a little wider than is necessary, and it might well be that they should be restricted accordingly. This, however, is more a matter of expression than of the substance of the controversy.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court varied the interlocutor of the Lord Ordinary by substituting the word "uplift" for "acquire in fee-simple;" and by substituting the words "to obtain payment of the said sums" for "to acquire the said stocks in fee-simple;" *quoad ultra* adhered, and found the petitioner entitled to additional expenses.

Counsel for the Petitioner—Dundas, Q.C.—C. K. Mackenzie. Agents—J., C., & A. Steuart, W.S.

Counsel for the Respondents—Balfour, Q.C.—Cooper. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, March 15.

SECOND DIVISION.

[Sheriff-Substitute of Lothians and Peebles.]

MUSHETS LIMITED *v.* MACKENZIE BROTHERS.

Reparation—Disclosure of Character of Servant—Breach of Contract—Damages—Measure of Damages—Extrajudicial Costs.

The defenders, a firm of ironfounders, engaged an ironmoulder who had formerly been in the employment of the pursuers. Thereafter they sent to the pursuers a printed memorandum headed "private and confidential," and containing inquiries about the ironmoulder in question. In answer to one of these inquiries the pursuers stated—"He went on strike, leaving us without sufficient notice. . . . It is unfair to us if he is in your employment." The defenders thereupon dismissed the ironmoulder from their employment. They gave him as their reason for doing so that he had broken his engagement with the pursuers, and they ultimately communicated the contents of the pursuers' answer to the Ironmoulders' Association, who had taken the matter up. The ironmoulder then brought an action for slander against the present pursuers, in which, after proof, they were assoilzied with expenses. The judicial expenses were paid. The present pursuers thereafter brought the present action, in which they claimed payment of (1) the extrajudicial costs incurred by them in defending the action brought against them by the ironmoulder; and (2) a sum as compensation for the time occupied by their managers, directors, and staff in matters connected with the action during its dependence. The Court dismissed the action as irrelevant—*per* the Lord Justice-Clerk, on the ground that the pursuers could not recover the extrajudicial costs of an unfounded action brought against them, even although the wrongful conduct of the defenders had led to the action being brought; *per* Lord Young, on the ground that the disclosure of a character to the person therein referred to could not under any circumstances give ground for an action at the instance of the person who gave the character against the person to whom it was given; and *per* Lord Moncreiff, on the ground that in the special circumstances of this case the pursuers were not entitled to recover damages, in respect that they themselves had suggested the dismissal of the workman.