

the lane—might be made lower, say 4 or 5 feet, as this height can readily be spared from the very high ceiling proposed. The height of the building itself would thus be reduced to a considerable extent, without detriment to the appellant, and to the advantage of the respondents' property, in substantially lessening the height of the building opposite their back windows."

The opinion of the Court was delivered by

The LORD JUSTICE-CLERK—The question in this case is, whether the petitioner is entitled to execute the operations for which he craves authority, or whether he is to be prevented from building to a height exceeding that of the flat belonging to him? We have come to the conclusion that there is no ground for such a limitation, and we shall grant the prayer of the petition, subject to the conditions suggested in the report of Mr Burnet. We therefore recall the interlocutor of the Dean of Guild and grant the prayer of the petition.

An interlocutor was accordingly pronounced to the effect mentioned by the Court.

Counsel for Appellant (Petitioner)—Pearson—Dickson. Agent—T. J. Gordon, W.S.

Counsel for City of Edinburgh—Trayner—Mackay. Agent—W. White Millar, S.S.C.

Tuesday, July 19.

FIRST DIVISION.

HALDANE (JUDICIAL FACTOR ON THE GIRVAN AND PORTPATRICK RAILWAY) v. GIRVAN AND PORTPATRICK RAILWAY.

(*Ante*, March 18, 1881, p. 451.)

Judicial Factor—Railway—Special Powers—Sale of Line—30 and 31 Vict. cap. 126, sec. 4.

The judicial factor appointed on the undertaking of a railway company under 30 and 31 Vict. cap. 126, sec. 4, does not require special powers in order to enter into negotiations for the sale of the line.

In this case the Court having found "that in virtue of the judicial factor's appointment under the 4th section of the Act 30 and 31 Victoria, c. 126, he is vested with the full and exclusive power of managing the undertaking of the Girvan and Portpatrick Junction Railway Company, under the direction of the Court," . . . the judicial factor reopened negotiations with the Glasgow and South-Western Railway Company, with the view of arranging a more satisfactory working agreement for the future carrying on of the line. He also consulted with Mr Andrew Dougall, the manager of the Highland Railway Company, as to the terms on which the line was being worked, and as to the course which should be followed in the future for the working of the line in the interests of its creditors.

On 5th May Mr Dougall made a report to the judicial factor, in which he suggested various

changes which seemed to him to be calculated to introduce greater economy into the working of the line. As the result of his investigations, Mr Dougall was of opinion that there were two courses open to the judicial factor—"First, To arrange with the Glasgow and South-Western Company to work the line at a percentage of the receipts, on the same principle as the Caledonian Company work the Portpatrick line, there being many similar cases in Scotland and England. The amount of the percentage would, of course, form the subject of negotiation. One great advantage of an arrangement of this kind would be that the Glasgow and South-Western would have an interest in developing the traffic of the Girvan Company, as a proportion of any increase would always go to them. Second, That the factor should work the line himself by appointing a traffic manager, who could also act as secretary, at a salary for both offices of £250 per annum; also a superintendent of permanent way at a salary of £150 per annum. In this way the traffic would be developed by the company's own officials, while the upholding of the line would be carried on with economy consistent with efficiency. This arrangement would involve making an agreement with either the Glasgow and South-Western or Caledonian, who have the necessary parliamentary powers, for a supply of rolling-stock at so much per train mile, and I should think either of these companies would be ready to do this."

On 24th May the Glasgow and South-Western Company intimated that they were not prepared to enter into any other agreement for working the Girvan and Portpatrick line than a six years' arrangement on a prime cost footing—a prime cost working being much less favourable to the Girvan Company than one by which they should receive a percentage of the receipts. At that date the line was actually being worked by the Glasgow and South-Western Company under an interim agreement which expired on the 31st of July following. In these circumstances the judicial factor presented this note, in which he stated that "The only two courses which appear open to him are—(1) to work the line himself with the necessary assistance for behoof of the Girvan Company, if the funds necessary for so doing can be obtained; or (2) to enter into negotiations for the sale of the line."

The judicial factor stated that he believed that the line would be saleable, and that he had already been informally approached on the subject by a party who proposed to offer for the line.

He stated that "in order to raise money by means of preference debentures, or to sell the line, the judicial factor would require a Special Act or Acts of Parliament, and he now makes the present application for your Lordships' authority to invite and receive offers for the purchase of the line, and then to apply to Parliament for such Act as shall seem in the circumstances desirable."

The judicial factor therefore prayed 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 Lord-

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 debenture-holders, 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 superseded 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