

Accountant of Court or other custodian to deliver up to them the said George M'Farlane's bond of caution, and decerns."

Authority—*Lowe*, October 19, 1872, 11 Macph. 17.

Counsel for Petitioners—Harper. Agents—  
H. B. & F. J. Dewar, W.S.

Friday, March 17.

### FIRST DIVISION.

MRS WYNDHAM RACHAEL TREGONWELL OR  
INGLIS, PETITIONER.

*Public Records—Delivery of Deed recorded in Books of Council and Session for Production in English Courts.*

The executrix under a deed recorded in the Books of Council and Session presented a petition for a warrant on the keeper of the register to deliver the deed to her for production in an English Court in a suit brought by her to obtain probate in her favour of the disposition, settlement, and codicil, the English Judge having declined to decree probate unless the original disposition, settlement, and codicil were produced in Court. The Court granted the prayer of the petition on the petitioner's granting a bond of caution with sufficient security to return the deed within one month, an extract of the deed duly authenticated being previously lodged *ad interim* in its stead.

This was a petition at the instance of Mrs Wyndham Rachael Tregonwell or Inglis, who resided at Druimuan, Perthshire, the widow of Major Raymond Inglis, who some time resided at Druimuan aforesaid. The petition narrated—That the said Major Inglis had died at Druimuan on the 2d September 1880, leaving a trust disposition and settlement dated 12th May 1873, with codicil appended thereto dated 23d December 1876, in favour of the petitioner and other persons therein mentioned, which disposition and settlement and codicil were recorded in the Books of Council and Session on the 23d of September 1880. That the petitioner on the 8th of June 1881 had brought a suit in the High Court of Justice in England (Probate Division) to obtain probate in her favour of the said disposition and settlement and codicil, but that the Judge in the said Court declined to decree probate unless the original disposition and settlement and codicil were produced in Court; that an extract duly authenticated was refused; and that no probate could be granted unless the original documents were produced.

The petitioner therefore prayed the Court "to grant warrant to and authorise the Principal Keeper of the Register of the Books of Council and Session, or other officers in charge of the said books, to deliver to the petitioner or her agents the disposition and settlement and codicil mentioned in the foregoing petition, for the purpose of being exhibited to the President of the Probate Division of the High Court of Justice in England, on her or their granting bond of caution with sufficient security to return the same to the said Principal

Keeper of the Books of Council and Session within one month, an official extract of the said disposition and settlement and codicil duly authenticated being previously lodged in their stead."

The following cases were cited in support of the petition—*Dunlop*, November 30, 1861, 24 D. 107; *Bayley*, May 31, 1862, 24 D. 1024; *Jolly*, June 25, 1864, 2 Macph. 1288; *Young*, February 2, 1866, 4 Macph. 344; *M'Donald*, November 3, 1877, 5 R. 44; *Kennedy*, July 13, 1880, 7 R. 1129.

At advising—

LORD PRESIDENT—I think that the prayer of this petition should be granted. It appears to me to stand very much on the same grounds as in the case of *M'Donald*.

The former case of *Dunlop* was a decision in the same direction, but there the petitioner was the only party interested in the deed. In *M'Donald's* case, as here, it was the executor under the deed who petitioned, yet the Court thought that that came so near the case of *Dunlop* that they granted the prayer of the petition, and I think we should do so here.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court granted warrant as craved.

Counsel for Petitioner—Muirhead. Agents—  
J. A. Campbell & Lamond, C.S.

Saturday, March 18.

### OUTER HOUSE.

[Lord Kinneer, Junior  
Lord Ordinary.]

REID AND OTHERS, PETITIONERS.

*Process—Judicial Factor—Factor loco tutoris and Curator bonis—Combined Application.*

An explosion of gas occurred in Glasgow by which loss of life was occasioned, and, *inter alios*, William M'Culloch, a mason, and Hugh Reid, a tinsmith, were killed. Actions of damages were subsequently raised by the relatives of each of the deceased against the Corporation of Glasgow as Gas Commissioners of the city. In M'Culloch's case damages were awarded to his widow, and also to each of his children, four of whom were in minority and three in pupillarity. In Reid's case, his grand-daughter, a pupil, obtained an award of damages. A petition was presented to the Junior Lord Ordinary in name of (1) Reid's grand-daughter, and her next-of-kin on both sides, (2) M'Culloch's widow and children and their next-of-kin, and (3) the tutor and curator *ad litem* appointed to the pupil and minor petitioners in the actions of damages, in which his Lordship was craved to appoint Mr Edward William Langlands, accountant in Glasgow, factor *loco tutoris* to all the pupil petitioners while in pupillarity, and thereafter *curator bonis* to them until they attained majority, and also to be *curator bonis* to the minor petitioners until they respectively attained majority. The Lord Ordinary (KINNEAR) after the petition had been duly intimated, no service being necessary, made the appointment as

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