The LORD JUSTICE-CLERK concurred.

LORD RUTHERFURD CLARK was absent.

The Court recalled the interlocutor reclaimed against, and in the action by the trustees decerned against the defenders for the amounts of the accounts-current, with interest; and in the action by James Gibson decerned against the defenders for the amount of the deposit-receipts, with interest in terms of the conclusions of the said actions.

Counsel for the Pursuers and Reclaimers—Dickson—Aitken. Agent—David Turnbull, W.S.

Counsel for the Defenders and Respondents—Balfour, Q.C.—H. Johnston—Dundas. Agents—Dundas & Wilson, C.S.

Wednesday, November 27.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

GLASGOW, YOKER, AND CLYDEBANK RAILWAY COMPANY *v.* LIDGERWOOD.

Arbitration—Compulsory Purchase—Railway—Lands Injuriously Affected—Jurisdiction—Interdict.

Where a claim for compensation is made under the Lands Clauses Consolidation Act 1845, the Court will not supersede the statutory arbitration for the purpose of determining the amount of such compensation, unless it is satisfied that the claim is irrelevant, or that the arbiter is asked to exercise a jurisdiction which he does not possess, or that the claimant's *prima facie* right to compensation is otherwise met by an objection which excludes inquiry.

Railway—Railway Operations—Compensation for Lands Injuriously Affected—Deprivation of Frontage and Access.

A claim for compensation, by the owner of lands, under section 6 of the Railways Clauses Act 1845, on the ground that he had been deprived of frontage to a road, and of frontage and access to a canal, in consequence of the railway company diverting the line of the road and of the canal, *held* relevant.

The Glasgow, Yoker, and Clydebank Railway Company, incorporated by Act of Parliament, 1878, are empowered by their Act of 1893 to divert the Forth and Clyde Canal, and the Boquhanran Road, near Clydebank, for the purpose of constructing a branch line. While these operations were in the course of being carried out, Mr William Van Vleck Lidgerwood served a notice of claim against the Railway Company, dated 3rd May 1895. The notice was in the following terms:—"The claimant is heritable proprietor of land at Clydebank, in the parish of Old Kilpatrick and county of Dumbarton, bounded on the north by the centre of the road to the south of the North British Railway; on the east by ground belonging to the Singer Manufacturing Company; on the south by land belonging to the proprietors of the Forth and Clyde Canal; and on the west by the Boquhanran Road, with the buildings and other erections thereon. The claimant himself occupies the said lands and buildings in connection with his business. In exercise of the powers conferred upon them by 'The Glasgow, Yoker, and Clydebank Railway Act 1893,' the said company are in course of diverting the Forth and Clyde Canal so as to take away from the said land about 900 feet of canal frontage. The said company further are in course of diverting the Boquhanran Road so as to take away from the said land about 120 feet of frontage to that road. The taking away from the said land of the canal and road frontage above referred to will injuriously affect the said land and the buildings thereon, and cause serious loss and damage to the claimant as owner and occupier thereof. In respect of the above-mentioned injurious affection to the said land and buildings, and all loss and damage incurred and to be incurred by the claimant as owner and occupier thereof, the claimant claims as compensation from the said Glasgow, Yoker, and Clydebank Railway Company the sum of (£7680) seven thousand six hundred and eighty pounds; and unless the said company be willing to pay the amount of compensation above claimed, and enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, the claimant requires that the amount of such compensation shall be settled by arbitration in the manner provided by 'The Lands Clauses Consolidation (Scotland) Act 1845,' and 'The Railways Clauses Consolidation (Scotland) Act 1845.'"

On 31st May the claimant, by deed of nomination and submission, nominated Mr William Copland, engineer, Glasgow, as arbiter on his part, and on 21st June the Company, under protest and without admitting liability, nominated Mr William Borland as their arbiter.

The company thereafter presented a note of suspension and interdict against the claimant and the two arbiters, craving the Court to suspend the proceedings in the reference, and to interdict the arbiters from assessing the compensation claimed by the respondent Lidgerwood.

The complainers averred—(Stat. 2) "The lands belonging to the respondent William Van Vleck Lidgerwood, in respect of which he claims compensation for alleged damage by the exercise by the complainers of the powers conferred upon them by their said Act of 1893, are situated to the north of a strip of land which intervenes between his lands and the said canal as existing. The said respondent's lands are bounded on the west by the Boquhanran Road, but they nowhere immediately adjoin the said canal, nor does the canal intersect his lands. . . . A strip of land from 30 to 100 feet wide lies between the respondent's lands and the portion of the canal to be diverted." (Stat. 3) "The com-

plainers, under the powers of their Act, are diverting the canal to the southward, and are also constructing a new road leading from the Boquhanran Road under the old line of the canal as diverted. The Boquhanran Road northward of the canal is not interfered with by the operations of the complainers in the slightest degree. The line or levels of the said road are not altered in any way. The only part of the said road which is vested in the respondent William Van Vleck Lidgerwood, or adjoins his property, is the part of the road northwards of the canal. The said road southwards of the canal is only available for foot passengers, but the new road will be available also for vehicular traffic."

The complainers pleaded—"(1) The complainers are entitled to interdict as craved, in respect that the lands of the respondent William Van Vleck Lidgerwood are not situated so as to give him any right to compensation in terms of the 'Lands Clauses Consolidation (Scotland) Act 1845,' and the Railways Clauses Consolidation (Scotland) Act 1845.'"

The respondent averred that he would be deprived of access to the canal, that the road facing his lands was to be blocked up by the complainers, and that accordingly his lands would be injuriously affected, and maintained that he was entitled to have the amount of damage resulting therefrom assessed by arbitration in terms of his notice of claim.

The Lord Ordinary, on 14th November, allowed a proof before answer.

Both parties reclaimed against the interlocutor, the complainers asking that interdict should be granted, and the respondent that it should be refused, without a proof.

Argued for respondent—If a proof were allowed at this stage, the parties would be put to the double expense of a proof before the Lord Ordinary, and of a second proof before the arbiters. The respondent had averred a relevant case for compensation in respect (1) of the cutting off of his access to the canal—*M'Carthy* v. *Metropolitan Board of Works*, 1874, 7 E. & J. App. 274, and (2) of the diversion of the road. With regard to the averments of the complainers that they had not interfered with the road *ex adverso* of his lands, the fact that they had blocked up one end of it "injuriously affected" his lands in the sense of the Act—*Walker's Trustees* v. *Caledonian Railway Co.*, January 21, 1881, 8 R. 405, March 29, 1882, 9 R. (H. of L.) 19. Accordingly he had put in a relevant claim stating a proper case for arbitration, and the complainers had not stated sufficient objections to it to entitle them to have an inquiry at this stage. The objections would have to be very strong to induce the Court to interfere in the manner desired by the complainers—*Dumbarton Water Commissioners* v. *Blantyre*, November 12, 1884, 12 R. 115. No legal question had been raised by the complainers, and if any such should arise in the course of the reference, which the arbiters were unable to deal with, these might be brought before the Court subsequently to the reference.

Argued for complainers—This was a case where there was reasonable danger of the arbiters going wrong. The complainers maintained that there was not a well-founded claim for compensation at all, and the arbiters would simply direct their attention to the amount, and would not consider the possibility of there being no legal claim at all. On the respondent's own averments they had no claim. (1) With regard to the road, his claim was based entirely on loss of frontage, but the complainers were not depriving him of frontage, and the fact of their blocking the road at one end did not entitle him to compensation—*Newport Railway Company* v. *Fleming*, November 12, 1879, 7 R. 179, March 19, 1883, 10 R. (H. of L.) 30. In *Walker's Trustees* a public street had been blocked, but here there was really no loss of access. (2) With regard to the canal, there was both a conflict in fact as to whether he had a frontage, and in law as to his title to a right of access, and the arbiters were not a proper tribunal to determine the latter point.

LORD PRESIDENT—I think the proper order to consider the questions in this case is first to look at the claim and consider whether it contains a relevant averment of damage entitling the claimant to compensation under the statute. Now, reading the claim, I think it does set out a relevant case for compensation, both as regards deprivation of the road by its being diverted from a part of the claimant's property, and also as regards the claimant's exclusion from the canal, which he avers he has heretofore used in virtue of a title to land abutting thereon.

I turn now to the terms of the record of the Railway Company—and what one is in search of is some salient and exclusive objection such as would justify us in granting interdict now. I can imagine, upon both these matters—both as regards the road and as regards the canal—that questions may arise in the course of the arbitration as to the quality of the injury done to the claimant, or still more probably as to the degree of legal injury which he has sustained. But that does not justify us in stopping these arbitration proceedings, and I am of opinion that the Railway Company have failed to show cause entitling them to have interdict pronounced at once, or to have a proof antecedent to the arbitration.

I am of opinion, therefore, that we should recal the interlocutor of the Lord Ordinary and refuse the note.

LORD ADAM—I am of the same opinion. I will say nothing upon the merits of the case; it may turn out in the course of the proceedings before the arbiter that the claimant is not injuriously affected, but if we look at the claims as they were stated, they appear to be *ex facie* relevant. I agree that the claimant is therefore entitled to have his case sent to arbitration, unless it could be made clear by the complainers that these claims though *ex facie* relevant are not really so. But that has not been done, and there is nothing to suggest that there is no relevancy in them.

LORD M'LAREN—It is confessedly an unusual step which we are asked to take, that of interfering with the progress of an arbitration, which is founded on an *ex facie* relevant case of liability under the statute. The more usual course, where there is a possibility that an arbiter may be invited to decide questions beyond his statutory powers, is to leave such anticipated questions to be determined after the arbitration is closed. If, notwithstanding the apparent relevancy of the claims, it should appear that there is a good answer to them which admits of being instantly verified, *e.g.*, that the Company's Act prescribes a special mode in which such claims are to be dealt with, then, on being satisfied that the compensation claimed was excluded by statute, interdict might be granted. I agree, however, that a necessary condition of staying proceedings in an arbitration is that there should be a substantial case displacing the *prima facie* right to compensation which accrues under the Lands Clauses Consolidation Act. I confess that I do not see any such case here; on the contrary, the arguments which we have heard leave an impression on my mind that, if we had all the facts before us, we should find nothing tending to discredit the relevancy of the claims, nothing that could not be dealt with effectively under an action for interpreting, or it might be for setting aside, the arbiter's decision.

LORD KINNEAR—I think we cannot grant interdict to prevent the parties proceeding to arbitration unless it is clear that the arbiter is being called upon to exercise powers which he does not possess. I agree that the question necessarily depends, in the first instance at all events, on the claim submitted to the arbiter. I also think that the claim, so far as its terms are set forth, is *prima facie* a relevant claim. The Railway Company state an answer to it, which they may or may not be able to make good. They may or may not be able to show either that the rights or interests alleged by the claimant are valueless, or to satisfy the arbiter or the Court that the loss of such advantages as he enjoys from his privilege of access to the canal or to the road, however valuable, will not entitle him to compensation under the statute. I am not prepared to say that the Railway Company have established either defence now, and, indeed, as regards one branch of the claim they do not maintain that they have. If we had to decide the merits of the case, I should have thought that the Lord Ordinary had taken the proper course, because material facts are in dispute. But that shows that we should not grant the interdict which is craved. I think the rule laid down by the late Lord President in the case of *The Dumbarton Water Commissioners* v. *Lord Blantyre* (12 R. at p. 120) is applicable, that "We are not entitled to interfere with the action of the arbiter to the effect of preventing him from entertaining a claim which we do not ourselves at present clearly see our way to determine."

I am therefore of opinion with your Lordships that the Lord Ordinary's interlocutor should be recalled, and the arbitration allowed to proceed.

The Court recalled the interlocutor of the Lord Ordinary and refused the note.

Counsel for Complainers—Dundas—Grierson. Agents—W. & J. Burness, W.S.

Counsel for Respondent—A. Jameson—Guthrie. Agents—Maconochie & Hare, W.S.

Thursday November 28.

FIRST DIVISION.

TOWN COUNCIL OF LANARK *v.* DISTRICT COMMITTEE OF COUNTY COUNCIL OF LANARK.

Public Health—Burgh—Parish—Joint Hospital — Parish partly Landward and partly Burghal—Transference of Powers of Parochial Board to County Council District Committee — Local Government Act 1889 (52 *and* 53 *Vict. cap.* 80).

A joint hospital was built by agreement between a town council and a parochial board, each of the contracting parties being entitled to the use of half the number of beds therein "for persons from their respective districts." The rights and duties of the parochial board were, by the Local Government Act 1889, vested in the district committee of the county council, whose "district" comprised a wider area than that controlled by the parochial board.

Held that the right of the district committee to send patients to the hospital was limited to that part of their district which had been under the control of the parochial board.

In 1887 the Town Council of the burgh of Lanark entered into an arrangement with the Parochial Board of the Parish of Lanark, the latter being the local authority under the Public Health Acts for that part of the parish of Lanark lying outwith the burgh, to provide a joint hospital. A site was purchased, and a hospital erected thereon. The parties, in 1889, entered into an agreement setting forth their respective rights, interests, and liabilities in the hospital. The agreement was entitled as being between "the Provost, Bailies, and Town Council of the Royal Burgh of Lanark, being the local authority under the Public Health Act of 1867, *on the one part*, and the Parochial Board of the parish of Lanark, being the local authority of the said parish under the said Act, *on the other part*;" and the preamble ran as follows:—"The said parties, considering that it had become necessary for them to provide for their respective districts an hospital or place for the reception of persons suffering from sickness, fever, and infectious diseases or disorders; that, under the powers conferred upon them by section thirty-nine of the said Act, they resolved to combine for the purpose of providing a common hospital,