

can be erected where the act is silent as to sheds. But if this argument could be maintained, it would be answered by the provisions to which I have referred; but it does not rest here. By 9 Vict. c. 23, which enlarged the time for the trustees compulsorily taking certain lands on the south side of the river, and authorized the making of a wet dock on the north side, the act 3 and 4 Vict. c. 118, and the Lands Clauses (Scotland) Act 1845, were to be read and construed as forming part of that act. This proves that all the acts form one law, and are to be construed accordingly; and § 3 then gives to the terms "other works," the meaning of "sheds, cranes, causeways, tramways, weighing machines, &c., connected with, or for the use of, the harbour or navigation." And this, I think, upon the true construction of the context of the act, impresses upon the words "other works," in the act 3 and 4 Vict. c. 118, the same meaning as was given to them by this act; for the act of the 3 and 4 Vict. was to be read and construed as part of the later act. The 10th section of 9 Vict. gives power to the trustees, who were trustees under all the acts, to "enclose by stone walls or other means, such portion of the dock, quays, wharfs, and other works under their management, as they may consider expedient for the security and safety of goods loaded and discharged at the dock or harbour."

On a review of all the statutes, I can find nothing to restrain the trustees from erecting any sheds necessary for their undertaking. On the contrary, I think, taking all the statutes together, they do authorize the erection of sheds and other works. But unless, by implication, they are prohibited from erecting sheds on the new acquisition, I think it clear that they may erect sheds, if even they are not, as I think they are, expressly authorized to erect them; for the erection of works, such as sheds, is incident to their ownership of the land, and nothing could be more mischievous than an endeavour to restrict their rights without a clear indication by the legislature of the extent to which their powers as owners of the land were to be restricted. In this case, what is proposed is clearly within the objects for which the trustees were empowered to purchase, and therefore the case introduces no question as to the power of a public company to dedicate their land to purposes foreign to the purposes for which the company was established. It was argued that "wharf" did not include a shed; that depends upon the nature of the works, and the context of the acts. If the appellants were within § 21, still they would be subject to the provision in § 23, and I do not think that the introduction of the word "sheds" in § 27, for the constructing of a wet dock, which includes all other incidental works, can assist the appellants.

Upon the whole, I apprehend it is not necessary to shew, that the sheds were authorized to be constructed, and the appellants have wholly failed in their contention at the bar. But I think it perfectly clear, that if it be necessary to find a power to erect sheds, upon the true construction of all the acts taken together as one act, as we are bound to take them, they confer upon the trustees the powers which they have exercised. I think it is quite clear that the appellant has failed upon all the points, and that consequently this appeal should be dismissed, and dismissed with costs.

Interlocutors affirmed, with costs.

Appellant's Agent, Andrew Howden, W.S.—Respondents' Agent, Simon Campbell, S.S.C.

JULY 23, 1855.

THE SCOTTISH CENTRAL RAILWAY Co., *Appellants*, v. THE STIRLING AND DUNFERMLINE and THE EDINBURGH AND GLASGOW RAILWAY Cos., *Respondents*.

Railway—Making Railway from another Railway—Point of Junction—Clause—Construction—*A railway act incorporated certain persons for the purpose of making a railway from the town of S., and also from the S. C. railway near S. to the town of D. A section of the act referred to the line as commencing by a junction of the S. C. railway at two places.*

HELD (affirming judgment), *looking at the plans and sections, this meant that there were to be two junctions of the new railway by running into or out from the S. C. railway at the places described.*¹

The action was brought to determine whether the respondents were entitled, under their several acts of parliament, "to form and maintain a junction of the Stirling and Dunfermline Railway with the line of the Scottish Central Railway at or near to the gas works in the burgh

¹ S. C. 27 Sc. Jur. 600.

of Stirling," in addition to the junction authorized to be made, and which had been made, between the two lines, "at or near to the north end of the Scottish Central Railway bridge over the river Forth at Stirling." The respondents maintained that two junctions were authorized by the acts of parliament, viz., one on the south of the Forth, at or near to the gas works in the burgh of Stirling, and the other on the north of the Forth, at or near to the north end of the Scottish Central Railway bridge over the river. The appellants, on the other hand, who opposed this view, contended, that only one junction was authorized, and that the position of it had been fixed to be at or near the north end of the bridge.

The point, which depends on a construction of the clauses of two acts of parliament, the one obtained in 1846, (9 and 10 Vict. c. 202,) and the other in 1849, (12 and 13 Vict. c. 86,) was decided in favour of the respondents in the Court of Session (15th December 1853).

In their case the appellants argued that the judgment of the Court of Session should be reversed—1. Because by the act of 1846 only one junction was contemplated and authorized. 2. Because by the act of 1849 the position of this junction was fixed to be "at or near to the north end of the Scottish Central Railway bridge over the river Forth at Stirling." 3. Because by the said act of 1849 any interference by the Dunfermline Company with the appellants' line, except for the purpose of making and maintaining the junction at the place specified, was expressly prohibited.

The respondents maintained, that—1. By the terms of the acts, and the relative plans and sections incorporated with them, the respondents were entitled to connect their line with the Scottish Central Railway at or near to the gas works in the burgh of Stirling, and also to make a junction at or near to the north end of the Scottish Central Railway bridge over the river Forth. 2. The respondents' operations being authorized by the statutes, there was no ground for granting the interdict prayed for.

Rolt Q.C., and R. Palmer Q.C., for the appellants.

Solicitor-General (Bethell), Dean of Faculty (Inglis), (with them H. Bruce), for the respondents.

LORD CHANCELLOR CRANWORTH.—My Lords, this is an appeal against an interlocutor of the Court of Session, the question being—whether, according to the true construction of certain railway acts, the Stirling and Dunfermline Railway Co. have, or have not, the power to start their railway, so to say, from the centre of the line of the Scottish Central Railway.

Now, there has been a good deal of argument upon the point, but it wholly turns upon the construction which is to be attributed to certain clauses in two acts of parliament. The first act was an act, whereby the Stirling and Dunfermline Railway Co. was formed, which may be treated as being the Edinburgh and Glasgow Railway Co., for they were to be the lessees of the railway, and the persons who were to work it; but it does not matter by which name you designate it.

The first act is an act whereby the Stirling and Dunfermline Railway Co. were constituted, and the first question to be considered is—what was the power which that company had under the original act. By § 3 of the original act certain persons were incorporated for the purpose of making and maintaining a railway from the town of Stirling, and also from the Scottish Central Railway near Stirling, to the town of Dunfermline. I think it is quite clear from that language that the legislature contemplated, so to say, two places of starting—no other interpretation can be put upon it—one of them being from the Scottish Central Railway. What does that mean? Grammatically, perhaps, the terms would be fulfilled by saying that you must start from a point in contact only with their rails. But that would be a very strange interpretation, to say that you actually might come in contact with their rails, and start from thence. Probably, therefore, we shall find, by looking at the other sections, that you must give a more wide interpretation to those words, "from the Scottish Central Railway."

Now in order to interpret that language, let us look at § 18, with reference to the plans and sections. It says there, that it shall be lawful for the company to make and maintain the main railway and branch railways to Alloa and other places, and works in the lines and upon the lands delineated upon the plans, and described in the books of reference. Now, although this is a minute criticism, this new line of railway is evidently intentionally marked as coming to a certain point—to the middle of the two lines of the Scottish Central Railway. It is impossible not to see, that that was what was meant. They are to start from the town of Stirling—that is one point—and from the Scottish Central Railway, and they are to do that according to the plan.

[*R. Palmer.*—Your Lordship will forgive me. The words "and also from the Scottish Central Railway," clearly refer to the point at the bridge.]

It may be so, either will do. I doubt that; but it does not matter, whichever interpretation is put upon it, whether one point of starting was to be from the town of Stirling, or rather from the railway. I am not sufficiently acquainted with the locality to know; but all that is material to consider is—that there were to be two points of starting, and one of those points, it is impossible to my mind not to see, that the legislature intended to be from the centre between the two lines of the old railway. It is so described, and there could be no other object in thus delineating it laboriously, and with such extreme minuteness as to bring the new line first of all along, and

then by and between the two lines of the old railway, except for the purpose of shewing that that was what was contemplated.

Then if that is so, let us see whether there is anything further in the act to illustrate it. Look at the 19th section. It says—"the main line of the said railway shall commence at or near to the gas works in the burgh of Stirling, and also by a junction of the Scottish Central Railway near the new bridge." I do not care which was meant by the railway in the former section. What is quite clear is, that one of those points at which it was to commence was to be at or near to the gas works. Now, observe the new railway was to the east of the old railway. I call it east, supposing the other to be running due north and south. It was to be at the east side. The gas works are at the west side. If this new railway was not to come into the old railway, nobody would have given such an extraordinary description of the locality of its starting, describing it as being "at or near" something which, according to the hypothesis of the appellants, was to have the old railway interposed between them and the new railway. It is a very accurate description, if you take it that the new railway starts between the lines of, or, in other words, runs into the old railway, because the old railway is properly described as being "near to the gas works;" but it would be a very extraordinary description indeed, to say that the new railway was to start from "at or near to the gas works," if it was to start from a point that was to have the whole of the Scottish Central Railway interposed between it and the gas works. It is impossible, upon any latitude of language, to treat that as a starting from the gas works. Not so if you start from the old railway, and treat this new railway as a line coming into and starting from the other railway; then it is all intelligible.

But I must observe also, that in this act the junction spoken of is always the other—the junction near the bridge. That is treated as the junction. And upon the plan you have marked not only the line running into the Scottish Central Railway near the gas works, but you have the junction at the bridge also marked on the upper part of this plan. I treat it therefore as a matter which admits of no controversy, that according to the first act of parliament the Dunfermline and Stirling line was authorized to start from the Scottish Central Railway near the gas works, meaning that they were to run out from or into it, whichever you please to term it, so as to form, in truth, a junction, though not so described there. They were to run on their line as indicated, to have the power of making a further junction at or near the bridge, and then to go on in the rest of their line. That, I confess, to my mind, is clear to demonstration upon the first act of parliament.

But what is suggested is, that whatever was the power given by the first act, by a certain clause in the second act, namely, the 25th section, that power was taken away, and after the passing of that second act they had no power to join the Scottish Central Railway, except by a junction at the north side of the bridge. Now that is not a conclusion at which I can arrive. In the first place, the act of parliament does not purport to have any such object as to alter the starting point, which had been given to this new railway by the former act. The name of the act is very different from that which we should expect to find, if this were its object. Let us see what that is. It is "An act to authorize a deviation of the branch line upon the Stirling and Dunfermline Railway to Alloa harbour, and the diversion of certain works, to extend the time for the compulsory purchase of certain lands, and for other purposes." It is said that the words "other purposes" might include this. No doubt they might. Let us see whether they do so. The recital begins, after reciting the former act—"And whereas it would be attended with public and local advantage if the Stirling and Dunfermline Railway Co. were authorized to make a deviation and alteration of the branch line of railway to Alloa harbour, authorized by the said first recited act, and also to divert and alter the sites, or present lines of certain private railways: And whereas it would also be attended with public advantage if the time granted by the said first recited act for the compulsory purchase of certain lands necessary for the completion of so much of the railway thereby authorized to be made as lies between Stirling and Alloa, as herein after mentioned, were extended, and if some of the powers and provisions of the said recited acts were repealed, amended, and enlarged; but these objects cannot be effected without the aid and authority of parliament."

Now the first observation that occurs to me is, that if so very important a provision, as a provision that enables this company to start actually from the lines of the other railway, so as to avail themselves of those lines, were intended to be altered, it is hardly possible that that should not have been distinctly enunciated. However, to be sure it might be so. But that is not the only difficulty the appellants have to encounter, because the 2d section is a distinct proviso, without any qualification—"Be it enacted, that nothing in this act contained shall be held to qualify or prejudice the rights or interests of the Edinburgh and Glasgow Railway Co. and the Stirling and Dunfermline Railway Co., under the said first recited act." Nothing in the act contained shall do that. Therefore, not only have you no recital of any intention to alter the starting point of this railway, but you have an express enactment, that whatever powers they have under their former act shall in no respect be qualified or altered by this act. I do not think that can be taken so strictly; but that if you found afterwards any provision, which in terms altered or

qualified the powers before given, the general enactment must give way to it; but if there be enactments afterwards which admit of a double construction—that is, if it is doubtful whether they do qualify the powers of the former act, or do not, it is a strong argument for saying, that you must put upon them the construction that does not alter it, because there is an express enactment that nothing in this act contained shall alter it.

Now, looking at that as a guide to our construction of the clauses which have been referred to, let us see how these clauses bear upon this point. I agree with Mr. Palmer in what he has said to-day, that §§ 20 and 21 may be put entirely out of the question. They really have not, to my mind, much bearing on the case. There is power given for extending the time of taking certain lands, which power is to apply to the lands south of the river, and therefore not to apply to these lands; and there is another provision, that nothing in this enactment shall at all prevent the operation of any contracts already entered into as to those lands or others, in respect to which the company have given notice. It must be treated, therefore, as if those sections were entirely out of the question. It occurred to my mind early in the argument that these two clauses had really no bearing on the case.

Then come the 23d, 24th, and 25th sections, which are supposed to take away the right of starting from the Scottish Central line. The 23d certainly does not do so in terms; it refers only to the junction at the bridge; and, undoubtedly, assuming it to be clear that there was to be only one junction, according to the construction of the former act, no doubt, inasmuch as you may clearly see that the legislature intended that there was to be a junction at the bridge, if there was to be no other junction, then the junction at the bridge must be the junction referred to, and there could be no junction at the side near the gas works. But what that section says is, that “the junction of the railway with the line of the Scottish Central Railway shall be made at or near to the north end of the railway bridge over the river Forth,” according to certain plans.

If you start with the hypothesis, that there was to be only one junction, of course that excludes the notion of a junction near the gas works; but if you do not start with that hypothesis, it seems to me to have no bearing upon the case. There was to be, or there might be, a junction at the bridge, that rendered § 24 necessary, because they would only come from that junction up to the station of the Scottish Central Railway over a very short distance, the tolls for coming over which short distance would be at a different rate from those which they would have to pay if they had come a longer distance.

It was not intended that they should have that burden imposed upon them, and § 24 was evidently to make arrangements with reference to that subject. Therefore it was a necessary enactment, and it seems to me to have no more bearing upon the case than § 23.

Then we come to that which, it seems to me, is the important section, and which, it is said, in terms, qualifies the meaning of the language of § 24. The 25th section enacts, “that, saving in so far as herein before expressly provided, it shall not be lawful to the Stirling and Dunfermline Railway Co., or any other company or party, to enter upon, purchase, or take any lands belonging to the Scottish Central Railway Co., without the previous consent of such company.” There was here that embarrassment, which has occurred frequently, of there being two railways, both of them entitled, in truth, to take the same land, and the one to take the lands of the other. That portion of the clause, I think, had reference to that difficulty, that, except so far as is expressly authorized, the Stirling and Dunfermline Railway Co. should not interfere with the lands wanted by the Scottish Central Railway Co. without their consent. Now we come to a very important enactment—“Nor shall it be in the power of the Stirling and Dunfermline Railway Co. to interfere with the said railway”—that is, the Scottish Central Railway—“except for the purpose of making and maintaining the junction before mentioned in the manner herein provided, or in any way to interrupt or interfere with the traffic passing on the said last mentioned railway, anything in the said recited acts to the contrary notwithstanding.” Now what is contended upon the part of the appellants is, that that is an express enactment prohibiting any junction with the Scottish Central Railway except a junction at the bridge. I can only say that I do not so understand it. I understand that that means that the legislature having given a power to the Stirling and Dunfermline Railway Co. to interfere with the Scottish Central Railway Co. at the bridge, and having given a power to run the traffic at certain rates, except so far as that is given there shall be no power whatsoever—the expression is extremely loose—“to interfere with the railway.” I suppose there might be bye laws made as to when goods are to come in, and things of that sort. The legislature says, You are not in any respect to interfere with the railway, or the traffic passing upon the railway. The language is loose, as it very often is in these acts of parliament, but the meaning appears to be this:—Although these powers have been here given to you, they are not to authorize you to do anything more than is expressly hereby given—that is to say, the powers that you have away from the bridge under the former act are not to be continued to you under that act, and under the saving clause (§ 2) of this act; but although you have a power more defined as respects the bridge, and although an express provision is made about the tolls to be taken, if you make that junction and run your traffic upon

it, nothing is to be taken as giving you any power whatsoever, except such as is here given for the purpose of interfering with the railway, or interfering with the traffic upon the railway. With that the whole thing is smooth and plain. The former act had, I think, expressly authorized the starting from the other railway at or near the gas works. There was a power to make another junction at the bridge. That is given in more precise terms in the second act, with certain adjuncts necessary to make it available, namely, with reference to the tolls to be taken; but except to that extent, this act is not to be taken as interfering in any manner with the Scottish Central Railway. This act does not interfere with it, but you are to have all the rights that you had before.

There was one argument which was adverted to the other day, that did not strike me as having any very great weight, but I wanted to see how it was borne out, which was this—that unless you hold that the legislature intended to have deprived them—the Stirling and Dunfermline Railway Co.—of the power which was given to them by the former act, there were certain words in the preamble of the second act that were inoperative. The preamble of that act states, that it is necessary, that some of the powers and provisions of the said recited acts should be repealed, amended, and enlarged. It is said there is nothing that will answer the word “repealed,” unless this clause is to be taken as repealing the former power. I should not have felt much pressed by that argument, considering the very loose and tautologous sort of language which is used in those acts. Perhaps tautologous is not the proper word here. I may say inappropriate language. But there are in this second act clauses repealing parts of the former act, for I observe that in the former act it is said, for all judicial purposes the domicile of the company shall be held to be Glasgow; in the new act it is said, for all judicial purposes the domicile of the company shall be held to be Edinburgh; that is a repeal. Again, it is said in the former act, that all advertisements shall be put into Stirling newspapers and Glasgow newspapers; it is said in the second act, that under both acts all advertisements shall be put into Stirling newspapers and Edinburgh newspapers; which was, as far as it goes, a repeal of the enactment that they should be put into Glasgow newspapers. I point that out, because, if you are to spell out an argument from anything so very unsatisfactory as the finding of that word “repealed” in the language of the preamble, which probably had no real bearing upon the matter in the minds of the framers of the act of parliament, you may, in the same way, meet it by arguments which probably have as little bearing upon it. I go upon the more general view that I have stated. I confess that I think this is a case perfectly free from all doubt, and, therefore, the motion that I make to your Lordships is, that the appeal be dismissed, with costs.

LORD BROUGHAM.—My Lords, I entirely agree with my noble and learned friend. I cannot help thinking that the word “junction” in these acts, is used by the legislature to describe where there is to be an auxiliary branch, as it were, between the one railway and the other, and that where they mean substantially a junction, though not in terms called a junction, they do not use that expression, but they say that one railway may join the other. They do not use the word “join,” but they say that one railway may start from the other, when the one railway is to start from the other without any subsidiary branch, as it were, driven from the one to connect it with the other. I think that will account, amongst other things, for the different language used in the 19th sect. of the act of 1846, where it is said, “that the main line of the said railway shall commence at or near to the gas works in the burgh of Stirling,” without saying by a junction; and then it adds, “and also by a junction with the Scottish Central Railway near the bridge.” It is to commence near the gas works, without a branch driven from it, because that is unnecessary; it is to commence, as it were, from the bridge of Stirling by a branch driven from one to the other, because there the junction requires it.

Interlocutors affirmed, with costs.

Appellants' Agents, Davidson and Syme, W.S.—Respondents' Agents, A. J. Dickson, W.S., and Smith and Kinnear, W.S.

JULY 26, 1855.

ALEXANDER and JAMES MORGAN, *Appellants*, v. JOHN MORRIS, PETER WANLESS, and Mrs. E. WANLESS or LYALL and Others, *Respondents*.

Process—Verdict—Ambiguity—Not proven—Succession—Interlocutor applying verdict—Competency of Appeal—*In an action of multiplepounding to determine who was entitled to succeed to the property of a party who died intestate, the claimants, A and B, who alleged the nearest propinquity, were appointed by the Court to stand as pursuers, and the case was sent to trial on these issues;—(1) Whether A is nearest and lawful heir of C; and (2), Whether B is, along*