SIR W. C. ANSTRUTHER, . . APPELLANT.

EAST OF FIFE RAILWAY COMPANY, RESPONDENTS (*a*).

1852.
19*th March*.

Affirmance of a refusal to grant an injunction or interdict in a case where it appeared that a judgment negativing the right had been pronounced by the Court below, in an action of declarator brought after the refusal of the injunction.

Quære—Whether a landowner, having property along the line of a railway, for the execution of which an Act has been obtained, but in pursuance of which Act nothing has been done, can compel performance of the work.

Quære—Whether he can prevent the Company from asking Parliament for an Act of dissolution.

The House will not, at the hearing, allow an Appellant to withdraw the material parts of his prayer, and retain something insignificant, merely to save his appeal from dismissal.

IN the year 1846, Sir W. C. Anstruther, being a principal landowner in that part of the county of Fife through which it was proposed to carry the above railway, made application to the secretary of the provisional committee respecting it; and received for answer a letter as follows:—

"EDINBURGH, *7th January*, 1846.

"I BEG to state that the line of this railway will be carried through your policy (*b*), not as laid down in the plan, but at the extreme southern line of deviation; and I hope your objections will thus be removed."

The Appellant was satisfied with the proposed line, and used his influence to support the scheme; but while the bill was before Parliament, he conceived it necessary to obtain an undertaking from the Company for the purpose of better securing what he conceived to be his rights. To satisfy his demands, the secretary wrote to him as follows:—

"LONDON, 24*th June*, 1846.

"SIR,

"In reference to the conversation which the deputation of the East of Fife Railway Company, now in London, have had with you on the subject of your claims against that Company, both as heir in possession of the estate of Anstruther, by the formation of that railway, and for your support of, and exertions in regard to the measure, I have to offer you, on behalf of the Company, that all such claims shall be referred to Thomas Rennie Scott, as sole arbiter; and that in terms of the Lands Clauses Consolidation (Scotland) Act."

(*a*) Reported in the Second or New Series of the Court of Session Cases, vol. xii. p. 127.

(*b*) *Anglicè*, Park.

To this offer the Appellant assented; and it appeared that he received a sum of money for his trouble and expenses as a witness in favour of the line.

The bill for making the railway received the Royal assent on the 16th July, 1846, and contained the clauses usual in such enactments.

On the 28th of March, 1849, before any of the works had been commenced, the Company came to a resolution to abandon their undertaking;—a resolution which they announced in the newspapers.

On the 30th May, 1849, the Appellant presented to the Court below a note of suspension and interdict, praying that the Company might be interdicted "from taking any steps or proceedings, having for their object the dissolution of the said Company, and from returning or paying back to the shareholders the money advanced and paid by them in the shape of deposits or calls, and from violating the contract or agreement entered into between the Complainer and the said Company, and from acting in any other way prejudicial to the interests of the Complainer, under the said contract or agreement, or contrary to the provisions of the statute incorporating the said Company."

The (*Lord Ordinary*) *Robertson* refused the note with expenses, and to this refusal the First Division, on the 17th November, 1849, unanimously adhered. Hence the present appeal.

Mr. *Rolt* and Mr. *J. J. Powell*, for the Appellant: An owner of land on the line of a railway, after the Act has been obtained, is in *this* country entitled to a mandamus compelling the Company to proceed and execute the works. *Reg.* v. *Eastern Counties Railway Company* (*a*). In *Blakemore* v. *The Glamorganshire Canal Company* (*b*), Lord *Eldon* laid it down that

(*a*) 10 Ad. & Ell. 531. (*b*) 1 Myl. & Keen, 162.

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"parties coming to Parliament should do whatever the Legislature empowered them to do, as well with reference to the interests of the public, as with reference to the interests of individuals." But, in the present case, there was a special agreement. Relying on that agreement, the Appellant had abstained from opposition, and had supported the measure. The letters of the 7th January and 24th June, 1846, are evidence of a contract which in England would be enforced specifically. *Edwards* v. *Grand Junction* (*a*). We admit that the injunction sought is large, and that it would prevent the Company from coming to Parliament for a bill of dissolution. But Lord *Cottenham* has said that in a "proper case he should not hesitate to exercise the jurisdiction of the Court of Chancery, by injunction touching proceedings in Parliament by a private bill or bills respecting property." That was in *Heathcote* v. *The North Staffordshire Railway Company* (*b*). [LORD CHANCELLOR: In that case acts had been done towards the formation of the railway.] We are willing to have the injunction abridged. [LORD CHANCELLOR: Is there any case in which, nothing having been done under the Act, a Railway Company has been compelled to execute the work?] Perhaps not. [LORD CHANCELLOR: It is stated in the Appellant's case, that he has brought an action of declarator. Has he established his right?] He has brought an action of declarator, and the decision has been against him. But he can appeal from that decision (*c*).

(*a*) 1 Mylne & Craig, 650.

(*b*) June, 1850, 20 Law Journal, 82.

(*c*) In December, 1849, an action was brought by the Appellant to have it declared that the Railway Company were bound to execute their work, or to make reparation to him; and he laid his damages at 20,000*l*. The Company put in a defence; and on the 3rd March, 1852, (sixteen days before the hearing of the appeal,)

Mr. *Bethell* and Mr. *Mundell* appeared for the Respondents, but were not required to address the House.

the Lord Ordinary (Wood) decided against the Appellant. He on the same occasion issued a long note, explaining the grounds of his decision. His Lordship considered the case to rest, first, on the foundation of an alleged special contract with Sir W. C. Anstruther personally, whereby the Company were said to have bound themselves to execute the line; and secondly, on a general undertaking incident to the obtainment of the Act. With respect to the first of these grounds, Lord Wood held that the two letters relied upon were insufficient to establish it. The letter of the 7th January, 1846, merely expressed an undertaking that the railway, *when made*, should be carried in a particular direction; but it did not actually engage to execute the line. The other letter of the 24th June, 1846, was nothing more than an anticipated nomination of an arbiter. With respect to the implied contract, which was supposed to arise from the obtainment of the Act, his Lordship remarked, that Sir W. C. Anstruther's claim of damages resolved into two distinct things—first, the uncertainty in which he was placed during the three years while the Company's powers lasted, as to whether they would take his lands or not; and secondly, his having been prevented "from resorting to other means for the developing the resources of his estate, which he alleges to contain coal and other minerals which cannot be made fully available without a railway, such as that projected." His Lordship's note then states, that the compulsory powers authorising the Company to take lands expired in July, 1849; and that, in 1850, the Company applied to Parliament for leave to dissolve themselves; and having proved to the satisfaction of the Legislature that the construction of the railway "had never been commenced," and that it was expedient to abandon the undertaking, an Act was thereupon obtained declaring, that from the date of its passing (14th August, 1850), the Company should cease to exist, except for the purpose of discharging debts, &c. By the second section of this Act, the Company were absolutely released and discharged from all obligation or liability to make the railway, and from all claims and demands in respect of contracts, which should be determined by reason of the abandonment of the undertaking, &c. The action of declarator was instituted *before* the passing of the dissolving statute, but not till *after* the compulsory powers of taking land under the original Act had expired; so that his Lordship apprehended it to be clear that the Pursuer was too late in bringing his action. After the compulsory powers had expired the Company could not be required to construct their

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The LORD CHANCELLOR (*a*):

My Lords, your Lordships are by this appeal asked to decide questions of very great importance in railway; and the conclusion for damages in respect of the non-construction could not be given effect to.

Upon the general question how far, when Parliament granted powers for the public benefit, it was incumbent on the persons receiving those powers to carry them into execution, his Lordship expressed himself as follows:—" Whether the Pursuer would have a title and interest, and good ground for insisting against the Defenders, that they should carry into effect the undertaking which their Act authorised them to execute, had the proper demand been made while the compulsory powers of taking (the existence of which was essential) had *not* expired, and within a reasonable time of the date of their cessation, it might be that an action for that purpose timeously raised would have been maintainable by the Pursuer, and that he might have been entitled to decree against the Defenders. For this there may be some authority in our own law. See *Hill* v. *College of Glasgow*, 13th November, 1849, Dunlop, 46. See opinions in *Ewing* v. *Airdrie and Bathgate Junction Railway*, 26th November, 1851, 1 Stuart, 70, and cases there cited. And cases appear to have been decided in England which would seem to countenance the competency of such a demand, and the enforcement of it in a form peculiar to the law and practice of that country. *The Queen* v. *Eastern Counties Railway Company*, 10th June, 1839, 10 Adolphus & Ellis, 531; *The Queen* v. *London and North-Western Railway Company*, 7th March, 1851, 17 Law Times, 92; and *The Queen* v. *York, Newcastle, and Berwick Railway Company*, 2nd June, 1851, 17 Law Times, 153." His Lordship might also have cited *Cohen* v. *Wilkinson*, 8th June, 1849, 12 Beavan, 125, where Lord Langdale, after much consideration, held it to be quite clear that "a Railway Company was not like a partnership for general trading purposes; but that it was a partnership for a public purpose, for effecting a work which it was a duty to complete; the obligation to complete the work being commensurate with the authority to make it." The case of *Cohen* v. *Wilkinson* came also before Lord Cottenham, who in dealing with it said (1 Hall & Twells, 564), "In the Court of Queen's Bench the Judges have established the doctrine, that a Company obtaining an Act of Parliament for the purpose of constructing a railway have entered into a contract *with the public*, and are liable to proceedings if they derogate therefrom." In *The Queen* v. *London and North-Western*

(*a*) Lord St. Leonards.

point of law; but they are questions which you can never be advised to determine upon the proceeding now before you.

What is prayed, is a general injunction on the assumption that the right will be established at the very period when that right has been denied, and the injunction in effect dissolved by a judgment against the Appellant in an action of declarator, not now before the House.

The Appellant, my Lords, has failed in his action of declarator; and I hope he will not be advised to bring it here. If, however, he should do so, the case would then be in a shape to enable your Lordships to give a clear opinion upon the points of law; but, as the matter now stands, I think it quite impossible to maintain this appeal.

Supposing an injunction or interdict in the terms

Railway Company, 20 Law Journal, 399, to the argument that the Company were not bound to make the line, and that the Act merely provided that it should "be lawful" for them to do so, Lord Campbell, C. J., said, "There are several authorities to show that these words are obligatory, where a public benefit is to be conferred." And Mr. Justice Erle, in *Reg.* v. *The York, Newcastle, and Berwick Railway Company*, 6 Railway Cases, 654, said, "It has been assumed throughout this argument that the obtaining an Act creates a legal obligation to complete the work." But then his Lordship added, that "the broad proposition, that the special Act imposes on the Company an obligation to make the line, may require some limitation, and is open to further argument." If the obligation exists, perhaps the objection "that nothing has been done under the Act," will have a more limited operation. The inquiry, however, will always be material. In *The Queen* v. *London and North-Western Railway Company*, 20 Law Journal, 399, Mr. Justice Patteson threw out this suggestion, "It may be that if the Company begin to make the Railway, they will be compelled to complete it; but not if they have never begun to construct it." And in the same case Lord Campbell said that the contract was binding on them to construct the line; "for they were not in the situation of a Company who had not exercised any of the powers conferred upon them by the Legislature." 6 Railway Cases, 651. These questions were lately under the consideration of the Court of Queen's Bench in the case of *Reg.* v. *The York and North Midland Railway Company*, which

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sought in the present case to have been obtained, it would have been one of the most important matters that could possibly come before your Lordships; for it would have raised the question whether a mere land-owner, having property along the line of an intended railway, could, as such, insist that the Company, which had not taken a single step towards the carrying through of the intended project, should be compelled to execute it. Upon that question I give no opinion; because, if it is to be decided, it is a point of so much importance, that its determination must be on a proceeding very different from that now before your Lordships.

The Appellant prays that the Company may be prevented from asking Parliament for an Act to put an end to this proprietory. It is perfectly clear that the terms in which the injunction is sought would go to interdict such an application. The Appellant is not a shareholder, nor a person with whom any contract has been specifically made, bearing upon the point now under consideration; but he is simply a person who may be benefitted or who may be damaged by the work intended to be performed. If such a person desires to oppose a projected measure in Parliament, he is at perfect liberty to do so; and he will be duly heard by the Legislature on the ground of his interest. But to grant an injunction in the circumstances of the present case is impossible.

Then the Appellant's counsel says "you may qualify this injunction;" that is to say, you may cut off three-fourths of that which is asked. I am sure, however, your Lordships will not allow parties at this stage to stands over for judgment. As to a Landowner seeking specific performance against a Railway Company, see *Lord James Stuart* v. *The London and North-Western Railway Company*, 4th May, 1852, 21 Law Journal, 450, and cases there cited. See also *Hawkes* v. *Eastern Counties Railway Company*, 17 Law Times, 301.

retreat from a part of their prayer, the material part of it too, and then to fall back upon something comparatively trivial, simply for the purpose of saving their appeal from dismissal.

With respect to so much of the prayer as asks that the Company may be restrained from paying back the deposits;—what possible right can a mere landowner have to interfere with the money of the shareholders, as between themselves? If this were granted, the consequences might be most mischievous.

Finally, as to the alleged agreement depending on the two letters, all that the Appellant could ask under it was, that his claims should be referred to arbitration. There was no proof that any attempt had been made to carry that agreement into effect; and before a step could be taken to enforce an injunction, it must have been shown that the reference had failed.

Interlocutors affirmed, with Costs.

SURR & GRIBBLE.—CONNELL & HOPE.