Monday, July 12.

(Before Lord Chancellor Selborne, Lord Blackburn, and Lord Watson.)

WILLIAM DIXON (LIMITED) *v.* CALEDONIAN RAILWAY COMPANY AND GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

(*Ante*, p. 102, 7 R. 216.)

Railway—Mines and Minerals—Notice to Purchase—Statute 8 *and* 9 *Vict. cap.* 33, *sec.* 71.

Held (*aff.* judgment of the Court of Session) that under the 71st section of the Railway Clauses Act 1845 (8 and 9 Vict. c. 33) a railway company that has received notice from an owner or lessee of minerals under a railway of his intention to work them, and has not within thirty days thereafter given notice of a desire that they should remain unworked, is not thereby barred from giving such notice subsequently when the workings seem likely to become dangerous to the line of railway.

The circumstances under which this case arose will be found narrated in the report of the case in the Court of Session, Nov. 13, 1879, *ante* p. 102, 7 R. 216.

The respondents in the original action, William Dixon (Limited), appealed.

In moving the judgment of the House—

LORD CHANCELLOR—My Lords, the Second Division of the Court of Session in this case have held that the railway company is not placed by the Railways Clauses Consolidation (Scotland) Act 1845 in the position of having thirty days after the receipt of a notice from a mine-owner, and no more, within which to make up their minds whether they will give a counter-notice to prevent the working of the minerals under the railway and for a certain distance from it upon the terms of compensation provided by the Act.

My Lords, there appears to be no authority upon the subject, unless it be a dictum which incidentally fell from the late Lord Chancellor in this House in the case of *Smith* v. *The Great Western Railway Company*, in which undoubtedly the Lord Chancellor, where no counter-notice had been given, and where the question did really not arise, and was in no way material to the decision, said this:—"There is no doubt that when Mr Smith gave his notice to the directors of his intention to work he stated to them that he intended to work both coal and ironstone, and if that notice was to be held a good notice, entitling him to work as to the ironstone, the time has passed for the railway directors to give a counter-notice, and he would be entitled, whether they were willing to compensate him or not, to work the ironstone" (L.R., 3 App. Ca. 182).

Your Lordships will, I am sure, feel great respect for any dictum, however unnecessary for the purpose of the decision of the particular case with reference to which it was said, which fell from so eminent a Judge; at the same time, I feel perfectly sure that that very learned Judge would have been the first to maintain that a dictum of that kind is not to be confounded with a judicial authority when the question to which it referred cannot have been presented in argument in the manner in which it would have been when it was the real point to be decided. At the most it indicates a *prima facie* impression of a very eminent and learned Judge, which certainly, so far as it goes, is favourable to the argument of the appellants in this case. On the other hand, we have the well-considered and deliberate opinions of three learned Judges since expressed in the Second Division of the Court of Session in Scotland upon the argument of the particular question as arising in this case, and that opinion is different from what was so incidentally expressed by the late Lord Chancellor.

My Lords, in this case your Lordships have had the assistance of an extremely full and able argument in support of the view which the Second Division thought erroneous, and I believe all your Lordships are of opinion that the result of the careful examination of the Act of Parliament which has now taken place is not to displace but to confirm the construction of that Act of Parliament adopted by the Second Division.

Now, my Lords, the matter, shortly stated, seems to stand thus—This and all other railways made under Acts of Parliament are made not only—perhaps I may say not principally—for the private benefit of the shareholders, but for the public benefit, as furnishing lines of traffic which from the time when the railway is made the public have a right to use. You must therefore consider that in any provisions such as those now to be construed in such Acts the public interest and the private interest are impartially and justly regarded upon the one side and upon the other; and if, my Lords, upon words or expressions at all ambiguous it would seem that the balance of hardship or inconvenience would be strongly against the public on the one construction or strongly against a private person on another construction, it is, I think, consistent with all sound principles to pay regard to that balance of inconvenience in determining such a doubtful question of construction.

Here, my Lords, it does appear to me that the inconvenience to the public and to the railway company—if the railway company is to be regarded as apart from the public—would be most serious, if through any inadvertence, or through any misconception, or for any other cause consistent with good faith, the thirty days had been permitted to elapse, and if that lapse of thirty days were held upon the construction of the Act to be fatal to the power of the railway company to save the railway from destruction by afterwards acquiring the right to stop the working of subjacent minerals. On the other hand, it appears to me that no injustice and no serious inconvenience, if any inconvenience at all, would occur to the mine-owner if he is liable to be stopped, at any time before the mines have been actually worked, upon the terms provided by the Act, of full compensation being made for the minerals which are to be left unworked, and for all loss or damage occasioned by the non-working thereof, that compensation to be settled as in other cases of disputed compensation. In the one case the full equivalent for the value of the property of the use of which he is deprived is to be given to the mine-owner; in the other case the railway company, and the public represented by the railway company, are left entirely at the mine-owner's mercy, who,

if he pleases to abuse his extreme rights in an extreme manner on that view of the case, would be at liberty absolutely to destroy the railway in a manner which possibly might be irremediable, or, if remediable at all, might be remediable only after great difficulty and after a considerable lapse of time. Or, on the other hand, he may demand any terms, however extortionate, which it can possibly be worth the while of the railway company to consent to in order to avoid the destruction of the line. If the language of the clause is such as to justify your Lordships at all in looking at the consequences, I do not think your Lordships can hesitate for a single moment to say that the great balance of the considerations depending upon reason and convenience would be against any construction *in re ambigua* which should expose the railway company to those consequences; while, on the other hand, in any event, full provision seems to be made for doing justice to the mine-owner.

My Lords, I have stated this in the outset, not by any means as supposing that those considerations would have a legitimate place in your Lordships' decision if the Act of Parliament were clear one way or the other—if there were no question fairly arising upon its construction. But when I come to look at the terms of this Act, it does appear to me that the burden of proof is, by the peculiar structure and language of these clauses, thrown upon the mine-owner rather than upon the railway company to make out that the Legislature has so ruled the case in his favour as to place the railway company and the public entirely at his mercy. For the scheme of these three clauses is this:—The first clause—clause 70—says that an ordinary conveyance of land for the purposes of the railway shall not be held to carry with it to the railway company a right to subjacent mines and minerals unless the same have been expressly purchased. I need not now particularly refer to that; and, my Lords, I will only add, that as I understand that clause and the next, there would be nothing in those clauses, if they stood alone, to deprive a railway company purchasing the surface from the owner of the land of the ordinary right to support from the subjacent strata though those subjacent strata were reserved and excepted in favour of the landowner. The 71st section, it is admitted, would, if it stood alone, have no other effect than this, that the mine-owner before he proceeds to work any mines or minerals under the railway or within a prescribed distance, or, if there is no prescribed distance, within forty yards from the centre line of the railway, is required to give notice of his intention to work those minerals and if he gives that notice the company is at liberty to give a counter-notice specifying "the parts of the mines under the railway or works or within the distance aforesaid which they shall desire to be left unworked, and for which they shall be willing to make compensation;" and if that is done, the owner, lessee, or occupier is not to "work or get the mines or minerals comprised in such notice," but compensation is to be made for them as is before stated.

That clause beyond all question introduces a definition of time for one purpose, simply of determining how long the mine-owners' right of working shall be kept in abeyance or suspense. And it is very important, my Lords, to observe that the manner in which it reckons time is such as is apt and appropriate for that purpose, and not apt or appropriate for the opposite purpose of putting the company under the obligation of doing something within a definite period. If a notice is given and time is to be reckoned from the date of the notice, that is an apt and a reasonable mode of defining the period within which something is to be done by the person receiving the notice. But if a notice is to be given not less than a certain time, or a certain fixed time, before something is to be done by the person giving the notice, that is plainly apt for the purpose of suspending his power to do that act until the notice shall have been given for that period, but it does not fix a *terminus a quo* fit for the reckoning of the time within which something is to be done by the person receiving the notice. That mode, therefore, of computing time, on the face of it, indicates that the object which the Legislature has in view is to fix the period during which the right of the mine-owner is to be in suspense, and not the period within which some act is to be done by the railway company.

My Lords, if it had been intended to fix the time within which the railway company must necessarily give notice or be for ever precluded from doing so, the natural place for fixing that time would have been in the 71st section, where the right to give the counter-notice is conferred upon the railway company. It would have run thus:—"If the company be desirous that such mines or any part thereof shall be left unworked, and if they be willing to make compensation for such mines or minerals or such parts thereof as they may desire to be left unworked, they shall within thirty days after the receipt of such notice give notice to the owner, lessee, or occupier," &c. That is the manner in which you would have expected to find such an enactment if it was the intention of the Legislature to put them under those terms. But neither there nor in the introductory part of the 71st section, nor in the introductory part of the 72d section, to which I shall presently advert, do we find any such period mentioned as thirty days after the receipt of that notice. It is not mentioned in any portion of those clauses, nor in this, which is the governing clause as to the right of the railway company to give notice, is any time whatever fixed within which such notice must necessarily be given.

But it is said by the appellants that you must infer that the notice is to be given, if at all, within thirty days, which must mean thirty days from the receipt of the notice, although no such period of time at all had been mentioned in the 71st section or is mentioned in the 72d. They say you must infer that this counter-notice of the company must be given within thirty days from the receipt of the notice, because this 72d section is introduced by these words:—"If before the expiration of such thirty days the company do not give notice of their desire to have such mines left unworked, and of their willingness to make such compensation as aforesaid, it shall be lawful for such owner, lessee, or occupier to work the said mines." I omit the rest for the present, though I shall have some observations to make upon it presently.

My Lords, those words are perfectly consistent and perfectly sensible and perfectly efficacious if they are understood to have only the same motive and purpose with the corresponding mention of

thirty days before the commencement of the working which we have at the beginning of the 71st section. As those words in the 71st section require a notice which is to precede the working by thirty days, so this says, that when such thirty days have expired and no new notice—no counter-notice—has been given, then the suspense or abeyance of working is to come to an end, and the mine-owner will be entitled to act upon his ordinary right as an owner of mines to work them.

My Lords, it is not true, as was suggested, that this clause if so construed is inofficious, because that which it says it shall be lawful for the owner after the thirty days to do is to work the mines "in such manner as he shall think fit for the purpose of getting the minerals contained therein." The words which follow plainly show that he may work the mines without any regard to the support of the railway and the railway works by the subjacent strata. It therefore is a clause which has the most important office of taking away that right to support which if there had been nothing said in that section would still have remained.

My Lords, so construed, effect is given to every word in the clause—more effect I should say to the words "such thirty days," which still mean thirty days before the commencement of the working, than would be given by any other construction; and no kind of necessity arises, by implication or otherwise, for limiting, in a manner in which the principal clause as to the company's action, namely clause 71, has not limited it, the time within which the company's counter-notice shall be given.

My Lords, I omitted to mention the words which are interjected after "to work the said mines," namely, "or such parts thereof for which the company shall not have agreed to pay compensation, up to the limits of the mines or minerals for which they shall have agreed to make compensation." Now, my Lords, if we had found the words "to work the said mines" without the addition of those later words, it might possibly have been argued that their meaning was that it shall be lawful, not merely to begin working but to go on working, and to work out the whole of the mines, though that would have been hardly possible considering the power to give partial as well as complete notice previously provided for. But then the power "to work the said mines" is qualified by the addition of the words "or such parts thereof for which the company shall not have agreed to pay compensation." It is manifest that whichever way the clauses are construed as to this limit of thirty days these words are perfectly sensible. If the company have only thirty days to give their notice in, of course then their agreement to pay compensation for any particular parts must have been within the thirty days; but if the company are not limited (as by the 71st section they are not limited) to the thirty days, then those words would be perfectly sensible, because if they have exercised the power of giving the notice under the 71st section at any time whatever as to mines not at that time already worked by the mine-owner, then they will have agreed to pay compensation, and the words "or such parts thereof" will be perfectly sensible—that is to say, the mine-owner will continue to have the right to work any mines as to which for the time being no notice has been given by the company, but will not have a right to work mines as to which the company shall, according to the true construction of the Act, have before that period agreed to pay compensation. The practical results of the whole is this, that after the thirty days have elapsed the mine-owner may begin to work and may go on working, and may get all the minerals that he can, until he is stopped and interrupted by a notice as to some part of the mine.

My Lords, before I conclude I may take notice of the extreme reasonableness of provisions of that sort when we regard the nature of the case and the kind of questions which are liable to arise in such a case. It is agreed on all hands that the Legislature did not think it desirable that a railway company should be found to purchase a mine, or a mine-owner to part with a mine, when the acquisition of it by the railway company was not necessary for the support and the safety of the line. It does not appear that the railway company, even when they have paid compensation, would have any power of working such mines; on the contrary, I should rather infer the reverse. In that state of things it cannot be supposed to have been likely that the Legislature should have wished to compel the company to make a premature decision when the means of forming a correct judgment as to what would be necessary for the support of the line might not be available to them. It can hardly be conceived that thirty days would be abundantly sufficient for the purpose even with the right of inspection that was given. The circumstances of this very case furnish a cogent illustration of the reverse, because here the notice was given pending a litigation between the company and the mine-owner as to the extent of the rights of mining, and the manner in which those rights might lawfully be exercised in the absence of any notice by the company or by the mine-owner. That litigation was actually going on, and as far as it had proceeded what had been done was in favour of the company's contention, although ultimately long after this notice was given and long after the thirty days had elapsed a different decision was arrived at, and it was determined that the mine-owner, if not stopped by some notice from the company, might proceed by open working in a manner *prima facie* destructive to the surface on which the lines of railway would be laid, although useful to himself. That matter was surely one which it was reasonable to take into a court of justice at the time, whether it was rightly determined in the result or not, and to say that pending a question of that kind and a litigation in which for the time being no decision adverse to the company had been made, but rather the reverse, the company were bound to enter into a contract within thirty days or never to make compensation for the whole of those minerals up to the very surface of the rails themselves, would surely, when we look at the circumstances of the particular case, not be either convenient or reasonable.

And, my Lords, those circumstances were of a kind which might arise in various forms as between mine-owners and railway companies. There might even be questions as to the right and title of a mine-owner to give any notice at all; there might be questions of many kinds affecting the mines and affecting the company, affecting the mine-owner—questions upon collateral agree-

ments, such as that which in this case is said to have existed; and the contention on the part of the appellants is that although those various questions might from the nature of the case exist at the time when a notice of this sort was given, yet still there was a hard and fast line laid down by the Legislature which would place the railway company and the public for ever at the mercy of the mine-owner, unless without waiting for the decision of any such questions the company bound themselves to purchase and make compensation for the minerals which it was necessary to leave unworked. My Lords, I do not think that it would have been a very convenient or very reasonable thing if such had been the law. Of course if the language of the Act had been clear that way, we could have done nothing but give effect to it. But those considerations do certainly appear to show that the opposite construction which the Court below has adopted, and which I believe your Lordships will be prepared to affirm, is a rational and convenient construction.

My Lords, I say nothing about the notice, because it does not seem that the question of the sufficiency of the notice in point of form was made the subject of controversy in the Court below. If it had been made the subject of controversy, I own for myself I entertain a serious doubt whether the notice itself was one which could have been held good.

My Lords, under these circumstances I move your Lordships to dismiss the appeal with costs.

Lord Blackburn—My Lords, the question, I think, turns entirely upon the construction of three sections—the 70th, 71st, and the 72d of the Railways Clauses Consolidation (Scotland) Act. The 70th section says in plain and intelligible terms that "The company shall not be entitled to any mines unless the same shall have been expressly purchased." The effect of that, if it had stood alone, would no doubt by implication, although it is not expressly said, have been that the mine-owner would have been entitled to work his mines just as if anybody else owned the surface instead of the railway company, and would have been under the same obligations, neither more nor less, to support the surface. But the Legislature obviously thought that although the company were not to be required to purchase them in the first instance (and that was no doubt a boon to the company), the interests of the public were concerned in the safety of the railway, because life and limb and property would suffer if the railway were to fall down or sink suddenly, and therefore they went on to provide that if the owner wished to work the mines within forty yards of the railway, he shall give to the company notice in writing of his intention so to do thirty days before the commencement of working. That does not in terms say, but it evidently means, that he shall not begin to work them until those thirty days have expired after the notice.

Then comes this clause—"Upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the company that the working of such mines either wholly or partially is likely to damage the works of the railway, and if the company be desirous that such mines or any parts thereof should be left unworked, and if they be willing to make compensation for such mines or minerals or such parts thereof as they desire to be left unworked, they shall give notice to such owner, lessee, or occupier of such their desire, and shall in such notice specify the parts of the mines under the railway or works or within the distance aforesaid which they shall desire to be left unworked, and for which they shall be willing to make compensation; and in such case such owner, lessee, or occupier shall not work or get the mines or minerals comprised in such notice." Now, stopping there, it is obvious that the notice, as far as the wording of that clause goes, might be given at any time. It does not say that the company if they make up their minds that they wish to make compensation for those minerals are to do so within thirty days; it says nothing of the sort. By implication, but by implication only, such a notice would be wholly inoperative after the mine-owner had taken away the minerals. If the railway company were to give the notice then, and say that they were desirous of making compensation for the minerals which the mine-owner had already taken away, that would obviously be too late; but that exception only results from the notice being too late in the very nature of things. Section 71 leaves the time within which the counter-notice is to be given without any term or limit at all, except that it must be before the minerals are taken away. If it had stopped there I think it would have been clear.

But then comes section 72, and there are two constructions, either of which may be put upon it. One is the construction put upon it by the Lord Ordinary, who says that he thinks the construction of section 72 is that the counter-notice may be given within the thirty days, but must not be given later—that the company may give it within the thirty days and no more. If that be right, of course the appellants are right.

In favour of that construction reference is made to the only authority upon the subject at all, namely, what the late Lord Chancellor (Earl Cairns) said in the case of *Smith* v. *The Great Western Railway Company*, and there the dictum was not relevant. He was considering whether a notice to take coal and iron, when the man who gave the notice had no right at all to the coal, but had a right to the ironstone, was a good notice or not; and in thinking about and in determining that he said that the time which had elapsed in consequence of the litigation about the coal, in which the company proved to be in the right, being more than the thirty days, the time would have gone; if this notice to take the ironstone was a good notice it was too late for the company to give a counter-notice. Now, it would have been quite as good for the purpose of the argument he was then putting if the late Lord Chancellor had said there would have been a grave doubt whether the notice then given would have been in time or not, and I do not think it can fairly be said that he paid more attention to it than to be satisfied that there was that grave doubt on the point. Looking at the section without having heard the point argued, his view at the first blush was that he thought that it did mean within the thirty days. That is an authority, and an authority of course which one does not act against without consideration, but it is not a decision at all, and I do not think it would be at all binding upon the late

Lord Chancellor (Earl Cairns) if he were here. He would say—"Upon hearing the argument I will consider whether that was right. I did say it at the moment without having heard it argued, and I consider my mind quite free to look at it one way or the other now." Still, I do not mean to say it is not an authority, and that the learned counsel for the appellants were not perfectly justified in pressing it.

For all that, however, I think, looking at the construction of sec. 72, the fair construction of the words, taking all the circumstances into account, is the other way, and that it means that the mine-owner may, as soon as the thirty days have elapsed, proceed to work, not only (as would have been implied before from the mere fact of the thirty days elapsing) taking due care about the surface, but to work in any manner he pleases. The section proceeds to say that distinctly. But I do not think there is any necessity to imply and interpolate here what is not in terms expressed in section 71—that he shall have a right then to work, not stoppable by any counter-notice given after the thirty days have expired. The words are—"If before the expiration of such thirty days the company do not give notice of their desire to have such mines left unworked" (I will leave out the superfluous words), "it shall be lawful for such owner to work the mines, or such parts thereof for which the company have not agreed to pay compensation, in such manner as he shall think fit." It is not an absurd interpretation to say that that means that he shall have an indefeasible right to work from the moment the thirty days have elapsed, but certainly it does not say so in terms.

The other meaning of the two which may be put upon these words is that which I have indicated, namely, if the thirty days have elapsed without a counter-notice the mine-owner may begin to work, and then as to such portions as he has worked, the counter-notice, if it ever comes, will come too late, but as to such portions as he has not worked when the counter-notice comes, if the railway company make compensation for all the damage that is sustained in consequence of leaving them unworked, there would seem to be no reason in justice why that should not be done. I quite agree that where the words of an Act are clear we are not to alter them or strain them to do what we think is reasonable; but where the words are not clear we must always look at the reason of the thing and understand the circumstances in order to see what those words applying to such a subject-matter mean. Now, seeing that there is no injustice in saying, and no reason at all for not saying, that the company may stop the workings at any time before the mine-owner begins working the unworked parts, paying full compensation for all the damage they may occasion by stopping them, I think as the words will bear that meaning it is better so to construe them than to say—If your company have allowed thirty days to elapse they shall then be at the mercy of the mine-owner, and be obliged to make such a bargain as they can with him; because if he says—I will take away minerals worth £100, and thereby tumble down your line at the cost of thousands, I demand therefore that you shall pay me a higher price—that is not exactly what the Legislature would wish us to encourage or assist him in doing. As I said before, if the words were clear, such a consideration would not entitle us to warp them; but I think the words are by no means clear, and we are entitled to have regard to this consideration in interpreting them.

It was suggested in the course of the argument that there might be cases in which a mine-owner having begun to work, or made preparations for working, would sustain very heavy damage indeed if the company changed their minds and tried to stop him afterwards. Such a thing is conceivable and possible, but it is a good sound maxim in construing Acts of Parliament to say *in ea qui frequentia accidunt preveniunt jura*—that the Legislature do not foresee and do not provide for very improbable events although they may be possible ones.

Therefore, my Lords, I have come to the conclusion that the true construction of these sections is that which the Second Division of the Court of Session have put upon them, and not that which the Lord Ordinary put upon them; and being of that opinion, I perfectly concur with the motion which my noble and learned friend on the woolsack has made.

Lord Watson—My Lords, this case raises a very important question in regard to the construction of sections 71 and 72 of the Railways Clauses (Scotland) Act of 1845. I think the general scheme of those two sections, taken in connection with section 70, does not admit of doubt. The Legislature did not contemplate that a railway company at the time of constructing their line should be under any obligation to acquire the minerals. The Legislature, however, intended that the railway company should have an opportunity of acquiring those minerals if they should come to be of opinion that their retention in an unworked state was necessary for the support of the line. Their time for taking them is regulated by these clauses, and the obligation to elect whether they shall take those minerals or not is delayed until the period shall have arrived when in the ordinary course of the underground workings of the owner they are approached so nearly as to be immediately worked if the workings proceed. I do not think it was in the least degree the intention of the Legislature to give to the owners of mines an opportunity, by giving a notice, of compelling the railway company to purchase the minerals and then leave them unworked.

Now, my Lords, taking the 71st section of the statute by itself, it imposes, in the first place, as I read it, a limitation upon the right of the mine-owner to work, that limitation being that he shall not work for thirty days. He is to give a notice at the commencement of the thirty days, and it is perfectly obvious from the tenor of the clause that within that period he is not to be at liberty to work, because the clause prescribes that during that period certain opportunities are to be afforded to the railway company, or to certain men of skill employed by them, to inspect the workings and to inspect the minerals which are to remain unworked during that period for that purpose. Then it proceeds to confer upon the railway company a right to give a notice to take those unworked minerals either in whole or in part—that is to say, they may either elect to take all the minerals that remain unworked within the prescribed distance or within 40 yards, or they may indicate the portion which is to be left unworked and compel the mine-owner to leave it. Then follows what appears to me a

very important part of the clause in considering the present question. There is a provision made for full compensation on the part of the railway company, not only for the value of the minerals which are left unworked, but for all the loss and damage which may accrue from their not being worked. My Lords, the real question in the present case arises upon the terms of the earlier portion of the 72d section of the statute. According to one view (that of the appellants) it imposes a very serious limitation upon the right to give a notice to take which is conferred upon the railway company by section 71. The appellants contend that although under the provisions of section 71 it would have been within the competency of the railway company to give a notice to take at any time before the minerals or any part of them are worked, the effect of this limitation is to deprive them of all right to give such notice unless it be given, not within thirty days before the minerals are actually worked, but within thirty days counting from the day on which they receive the notice. I entirely dissent from that view, and I concur in the view of your Lordships, which is also that on which the Court below proceeded —the learned Judges of the Second Division— namely, that these words are simply intended to provide that the owner's right to work is no longer to be suspended, and that he may proceed to work without regard to any obligation of support to the railway, either subjacent or lateral, and that he may work free of any condition of that kind unless and until his operations are stopped by a notice from the company under section 71. I prefer that reading. It appears to me to be the more natural one, without taking into account any of those obvious considerations of convenience and public expediency to which the noble and learned Lord on the woolsack has already alluded. I prefer it for this reason amongst others, that it leaves untouched the provisions of section 71, and is in entire harmony with them.

I think this was a very necessary clause. I do not think it was in the least degree inofficious in the view which I take. The words "if before the expiration of such thirty days the company do not give notice of their desire to have such mines left unworked" appear to me to be exceedingly appropriate if you apply them to the suspended right of the mine-owner to work, but I think they are exceedingly inappropriate if they were intended to be applied to the supposed right or the supposed obligation on the part of the company to give notice within thirty days of their receipt of a notice from the mine-owner. My Lords, it is important in construing this clause to keep in view that it was necessary, in order to complete the scheme of these sections and in order to do away with all obligation on the part of the landowner, to give support to the railway in the event of the railway company not electing to take his minerals. And it is very obvious that if you read the clause in the way your Lordships hold that it ought to be read, the result to the mine-owner is this—he can impose a most effective practical limit upon the right of the company, or upon the time which the company may take to purchase his minerals compulsorily; he can work them out, and that will put an end to all right on the part of the company, the subject having disappeared. On the other hand, if your Lordships had adopted the reading of the clause which was suggested on the part of the appellants, the result would have been that at the end of the thirty days the right of the company to take the minerals by purchase would have absolutely gone. And as far as I can see, the words of the 72d section do not require actual working; they merely make it lawful. The mine-owner would have the option of working them or not, and for all I see he might have left then unworked for thirty days or for thirty days longer. That appears to me to be entirely contrary to what was contemplated by the Legislature, namely, that the company were not to take or pay for these minerals until they were on the point of being worked, or until in the course of fair working they would have been removed.

My Lords, I do not consider it necessary to advert to any of the other considerations which have been so amply discussed by your Lordships. I will only express my entire concurrence in the judgment now proposed to be pronounced.

Interlocutors under appeal affirmed, and appeal dismissed with costs.

Counsel for Appellants—Kay, Q.C.—Chitty, Q.C. Agents—Melville & Lindesay, W.S.

Counsel for Respondents—Benjamin, Q.C.—Mackintosh. Agents—W. A. Loch, and Gibson-Craig, Dalziel, & Brodies, W.S.

END OF VOLUME XVII.