

Tuesday, March 20.

FIRST DIVISION.

BROAD v. THE EDINBURGH NORTHERN
TRAMWAYS COMPANY.

*Process—Judicial Factor—Vacation—Companies
Clauses Consolidation (Scotland) Act 1845 (8
and 9 Vict. cap. 17), sec. 57.*

The powers conferred by the 57th section of the Companies Clauses Consolidation (Scotland) Act 1845 for the appointment of an interim judicial factor, cannot be exercised by the Lord Ordinary on the Bills during vacation.

On 19th March 1888 a petition was presented to the Court by Mr Warrington Evans Broad, the holder of certain mortgages for £3370 and other sums of the Edinburgh Northern Tramways Company incorporated under the Edinburgh Northern Tramways Act 1884, for the appointment of an interim judicial factor upon the undertaking in terms of the provisions of the 56th and 57th sections of the Companies Clauses Consolidation (Scotland) Act 1845.

The 57th section of that Act provides—"Every application for a judicial factor in the cases aforesaid shall be made to the Court of Session, and on any such application so made, and after hearing the parties, it shall be lawful for the said Court, by order in writing, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid." . . .

It was argued for the petitioner that the decision in the case of the *Glasgow, Garnkirk, and Coatbridge Railway Company*, May 28, 1850, 12 D. 944, in which it was held that such an appointment could not be made in vacation did not now apply, in view of the provisions of the 4th and 10th sections of the Distribution of Business Act 1857 (20 and 21 Vict. c. 56).

The 4th section of that Act provides (sub-sec. 4) that "Petitions and applications for the appointment of judicial factors" should be disposed of before the Junior Lord Ordinary, and the 10th section provides that "the Lord Ordinary on the Bills during vacation shall have the same powers in regard to petitions for the appointment of . . . judicial factors as are by this Act conferred in relation thereto on the Junior Lord Ordinary as aforesaid."

The Court held that the provisions of the Distribution of Business Act 1857 could not be held to apply to the present case which involved the exercise of a kind of diligence, but in respect that the company were represented at the bar and gave their consent they pronounced an interlocutor holding intimation and service to be granted as prayed for, and of consent appointed Mr D. N. Cotton to be interim judicial factor.

Counsel for the Petitioner—Graham Murray.
Counsel for the Respondents—Sir L. Grant.
Agents—Graham, Johnston, & Fleming, W.S.

Tuesday, March 20.

OUTER HOUSE.

[Lord Trayner, Ordinary.

HARLEY, PETITIONER.

*Judicial Factor—Curator Bonis—Cautioner—
Bond of Caution by a Limited Company.*

Petition granted in which a *curator bonis* prayed the Court to authorise the bond or policy of the Sickness and Accident Assurance Association (Limited) to be accepted instead of a bond of caution by a private individual.

James Harley, tailor, Leven, Fifeshire, was appointed, on 25th February 1888, *curator bonis* to his niece Agnes Elder Scott, and factor *loco tutoris* to his nephews James Harley Scott and John Lindores Scott.

The petition for the appointment was presented by their mother, their uncle John Scott, and their uncle the said James Harley.

Their father Robert Scott, wine and spirit merchant, 1 Hope Street, Edinburgh, had left moveable property of the value of about £2300, and heritable property of the value of about £2000, but he had died intestate without having made any appointment of tutors or curators to his children, and their mother, who had been appointed executrix-dative *qua* relict, had an interest in the estate adverse to that of her children.

By the interlocutor making the appointment the Lord Ordinary (TRAYNER) fixed £3000 as the amount of caution to be found by the factor, and authorised a bond or policy for that amount of the National Guarantee and Suretyship Association (Limited) to be accepted and taken for him instead of a bond by a private individual.

Upon 17th March 1888 the factor presented a note to the Lord Ordinary, in which he stated that the National Guarantee and Suretyship Association (Limited) had declined to grant said bond or policy at a lower rate than 7s. 6d. per cent., or an annual premium of £11, 5s., which would absorb the greater part of his commission, and craved that a bond or policy for the same amount of the Sickness and Accident Assurance Association (Limited), with its head office at 1 St Andrew Square, Edinburgh, which had offered to grant a bond or policy in similar terms to that granted by the said Guarantee Association, or in such other terms as his Lordship might approve, and that at an annual premium of 5s. per cent., or £7, 10s., might be accepted on his behalf.

Authorities cited—*M'Kinnon, Petitioner*, March 8, 1884, 11 R. 676; *M'Kinnon, Petitioner*, November 26, 1884, 12 R. 184.

The Lord Ordinary remitted the note to Mr John Galletly, S.S.C., to inquire and report.

Mr Galletly reported upon the Sickness and Accident Assurance Association (Limited) as follows:—"The company was incorporated on 17th April 1885 with a subscribed capital of £60,000, consisting of 12,000 shares of £5 each, whereof £1 per share is paid up, leaving an uncalled liability of £48,000. The reporter has gone carefully over the list of shareholders, 340 in number, and considers them a substantial body. There are only two or three holders of large numbers of shares, and these shareholders, so far as the re-