

truster's daughter "the whole rest, residue, and remainder of my said means and estate, heritable and moveable, real and personal, and that absolutely, and take her discharge therefor; and likewise, as any portion of the capital invested to meet the foresaid annuities becomes, by reason of the death of any of the annuitants, available for that purpose, in like manner to pay over such part of said capital absolutely to my said daughter, and that from time to time as the annuities lapse in manner foresaid, and until the whole capital thus invested is paid over or accounted for to my said daughter." By the fifth purpose the truster directed his trustees, if his daughter predeceased him, or survived him but died without having received payment of the whole residue of the estate, by reason of any annuitant being in the enjoyment of an annuity, and left a lawful child or children, that they should hold and retain the residue, or such part thereof as might become due and divisible subsequent to Miss Kidston's decease, for behoof of the children, and ultimately to divide the residue of the estate in a certain manner specified; and it was then "expressly provided and declared that said annual income or interest shall be payable by my trustees to my said daughter, exclusive always of the *jus mariti* and right of administration of any husband whom she may marry, and that the receipt of my said daughter, by herself alone, without the consent of such husband, shall be sufficient to my trustees therefor, the rights of such husband and that of his creditors being hereby expressly excluded and debarred."

Dr Kidston was survived by his daughter, who is unmarried; and a considerable sum remained after payment of the legacies and annuities directed. This Special Case was brought to have it settled whether a right to the fee of the residue had vested in Miss Kidston, and whether she was entitled to payment of the capital from time to time as realised; or whether the trustees were bound to hold the capital of the residuary estate during the life of Miss Kidston, and to pay the annual income or interest thereof to her, exclusive of the *jus mariti* and right of administration of any husband she might marry.

KINNEAR for the Trustees.

SPENS for Miss Kidston.

The Court held Miss Kidston was entitled to immediate payment of the residue in hand, and of the rest as it fell in.

Agents for Trustees—Morton, Whitehead, & Greig, W.S.

Agents for Miss Kidston—Neilson & Cowan, W.S.

Tuesday, February 22.

CALEDONIAN RAILWAY COMPANY v. CLYDE NAVIGATION TRUSTEES.

Harbour-Dues. Under the schedule of an Act of Parliament dues were leviable on vessels "arriving at or departing from the harbour of Glasgow." *Held* these dues were not payable by vessels not coming above a part of the river much lower down, as it was not the harbour.

This was a note of suspension and interdict presented by the Caledonian Railway Company, now proprietors of the Forth and Clyde Canal, and by certain parties, owners of vessels trading to and

from the canal, or the harbour at Bowling connected with it, to have the respondents interdicted "from charging and levying any portion of the harbour rates or dues specified in the first three sections or clauses of Schedule (G) of the Act 21 and 22 Victoria, cap. 149, upon the complainers' vessels using the river Clyde in trading to and from the Forth and Clyde Canal and Harbour at Bowling, but not arriving at or departing from the Harbour of Glasgow; or at all events to interdict, prohibit, and discharge the respondents from charging and levying such rates, or any portion thereof, upon the complainers' vessels trading to and from said canal and inner basin thereof, and using only the third or lowermost stage of the Clyde Navigation, being that portion of the river extending from the mouth of the Dalmuir Burn to the Castle of Newark."

The various Acts relating to the river Clyde and Harbour of Glasgow were consolidated and amended by 21 and 22 Victoria, cap. 149. By section 97, certain rates specified in Schedule (G) annexed to the Act were imposed, "subject to the provisions of this Act," on and in respect of all vessels entering or using the river or harbour. By the 98th section certain other rates were authorised to be levied on all goods shipped or unshipped in the river or harbour. And by the 99th section the river was divided into three stages, as in a previous Act—the third or lowermost stage extending from the mouth of the Dalmuir Burn to the Castle of Newark, within which limits the junction of the Forth and Clyde Canal with the river Clyde is situated. The first three clauses of Schedule (G) authorise the charging of rates upon all vessels "arriving at or departing from the harbour of Glasgow;" and the complainers, insisting on the alternative part of their prayer, maintained that dues were not exigible from their vessels coming to and from the harbour of the Forth and Clyde Canal, as these vessels could not be said to be "arriving at or departing from the harbour of Glasgow;" and as the Act imposes rates on vessels "entering or using the river" and not liable for the above rates.

The Lord Ordinary (JERVISWOODE) gave effect to this contention of the complainers, and granted the interdict.

The respondent reclaimed.

DEAN OF FACULTY and WATSON for them.

SOLICITOR-GENERAL and JOHNSTONE in answer.

The Court adhered and made the interdict permanent.

Agents for Complainers—Hope & Mackay, W.S.
Agent for Respondents—James Webster, S.S.C.

Wednesday, February 23.

ROY v. HAMILTON & CO.

Agency—Commission—Dash—Mandate—Salary—Services—Travelling Expenses. The pursuer having been taken into the defenders' service with a salary of £100 a-year "and a dash;" and, in the second year, in respect of the value of his services, his salary having been raised to £200, *held* (1) that the defenders were not entitled now arbitrarily to assert that this dash was not in addition to it; (2) that having been allowed a commission by the defenders' agent on the cargoes traded for, he was entitled to this commission subsequent to this date, though previous to the granting of an agency and mandate direct from the defen-