

not be liable for damage by reason of loading, and so on, as is provided here. Therefore, looking at this special contract with reference to the dealings between the parties, I think we must sustain the contract as a reasonable contract, and sufficient to exempt the railway company from liability for the loss in question.

The other Judges concurred in holding that, in the circumstances of the case, the railway company were not liable for the loss of the cattle.

Agents for Advocators—Gibson-Craig, Dalziel, & Brodies, W.S.

Agent for Respondent—W. S. Stuart, S.S.C.

Tuesday, February 2.

ROSS AND OTHERS v. CLYDE NAVIGATION TRUSTEES.

Obligation—Property—Statutory Trustees—Discretion. Part of the lands of S was disposed to the Clyde Trustees in 1846 for the sole purpose of erecting a wet dock, all building on the lands except in connection with the dock being prohibited. In an action in 1868 by the proprietor of the remaining lands of S, alleging that no dock was formed or begun to be formed, and that the ground was put to uses not sanctioned by the disposition, held (1) that the pursuer was not entitled to decree ordaining immediate construction of the dock, as that would interfere too much with the discretion of the trustees; but (2) that he was entitled to decree of declarator that the defenders could not use the land for general purposes unconnected with the dock.

In 1845 the pursuers, proprietors of the lands of Stobcross, lying on the north side of the river Clyde, in the barony parish of Glasgow, and with a considerable frontage to the river, agreed after sundry negotiations to sell to the defenders, subject to the conditions, burdens, and others after mentioned, a part of their lands adjoining the river for the formation of a wet dock or tidal basin at the price of 8s. 6d. per square yard, the said sale, however, being made contingent upon an Act being passed in the then next Session of Parliament, authorising the trustees to acquire the lands for the purpose foresaid, and to form or construct thereon a wet dock or tidal basin. Accordingly, in the next Session of Parliament an Act was applied for and obtained by the said trustees, being the Act 9 Vict. c. 23, entitled, "An Act for enabling the Parliamentary Trustees on the river Clyde and harbour of Glasgow to acquire a portion of the lands of Stobcross and adjacent grounds, and to construct thereon a wet dock or tidal basin, with certain additional wharfs and other works—18th June 1846." In the preamble of the said Act, the Act 3 and 4 Vict. c. 118, which authorised the formation of docks on the south side of the river Clyde, is recited, and the said Act proceeds on the further preamble that "the accommodation of the said harbour (of Glasgow), particularly for the mineral traffic, is at present inadequate, and that it is necessary that the same should be enlarged, and that the trustees should be authorised for that purpose to acquire certain lands and heritages at Stobcross and continerous thereto, and to construct a wet dock or tidal basin and other works thereon, and with that view that they should be empowered to borrow a further sum of money on

the credit of the existing rates and duties under their management, and the additional dock duties and other duties to be hereby granted." By section first of the said Act of 1846 it was enacted that it should be lawful for the said trustees to conclude a purchase of from 140,000 to 150,000 square yards of the said lands of Stobcross from the proprietors thereof, and likewise to purchase or acquire such adjacent or additional lands as they should find to be necessary for the construction of a wet dock or tidal basin, or wharfs, quays, and other works within the limits mentioned in the said Act." Other sections of the Act authorised the trustees to make the works contemplated, and to borrow money for the purpose.

In October 1846 the pursuers granted a disposition in favour of the trustees of that part of the lands of Stobcross which it had been agreed should be sold to them.

The disposition declared "First, That the forecast public road of 25 feet in breadth, leading from Partick Mills by Pointhouse to the Broomielaw of Glasgow, which passed through the portion of our said lands hereby disposed, shall be diverted by our said disponees upon the ground hereby disposed, when the same shall become necessary by our said disponees shutting up or altering the present road, in carrying into effect the operations for the formation of the said wet dock or tidal basin and other works, so as still to give the remaining lands of Stobcross, belonging to us, the benefit of a road bounding our said remaining land, and leading to Broomielaw and Pointhouse, instead of the existing road; provided always that until the said road shall be altered as aforesaid, we and our tenants and possessors in the said remaining lands shall have access to the existing road through the subjects hereby disposed, in a manner as little as may be injurious thereto. Second, The lands hereby disposed being sold for the sole purpose of forming thereon a wet dock or tidal basin, and other relative works in connection with the river and harbour of Glasgow, there shall not be erected upon any part thereof any buildings or erections of the nature of public works, stores, warehouses, or dwelling-houses, nor any other erections, except sheds, cranes, and others necessary for working a dock basin or harbour. Third, We and our successors in the remaining lands of Stobcross shall have access to the wharfs surrounding the said intended dock or basin from streets to be formed on our remaining lands, the nature of the necessary accesses, in case of differences between the parties in relation thereto, to be fixed by John Baird, architect in Glasgow, whom failing, Thomas Kyle, land surveyor there, whom also failing, any referee to be mutually agreed upon by the parties,—it being expressly provided that the said John Baird, whom failing, the said Thomas Kyle, and whom also failing, the referee to be agreed upon as aforesaid, shall, in deciding the question, keep in view that the object contemplated is to give *bona fide* and sufficient access from the streets or remaining lands of Stobcross to the wharfs surrounding the dock or basin, and in regulating such access the referee shall keep in view that it may be necessary to shut up the dock walls or other enclosures during the night, and that the object of the present provision is simply to secure *bona fide* and sufficient access from the streets and buildings, on our said remaining lands, at all times when open for trade or business. Fourth, Full right is hereby reserved to us and our successors in the remaining lands of

Stobcross to lay pipes into the river, or into the said dock or basin, for drawing water therefrom, and returning water thereto, for the use of the said remaining lands of Stobcross, and of all erections to be made thereon, and also to lead common sewers into the said river, or into the said dock or basin, in such manner as to secure to the said remaining lands the full benefit of their locality, as adjoining the said river, or dock, or basin, the situation and number and extent of which pipes and common sewers shall, in case of difference of opinion between the parties, be settled by the said John Baird, whom failing, by the said Thomas Kyle, whom also failing, by the referee to be agreed upon as aforesaid; all which declarations, provisions, and conditions hereinbefore written, shall be, and are hereby declared to be, real liens and burdens upon the lands hereby disposed in all time coming, and as such, shall be inserted in the infertment to follow hereon, and in all the subsequent writings and title-deeds of the lands hereby disposed, otherwise the same shall be void and null." Infertment followed in favour of the trustees.

The pursuers now brought this action, concluding for declarator that the defenders, as proprietors of the ground purchased by them from the pursuers—" (1) Are bound to make and execute, on the lands disposed by the said disposition, a wet dock or tidal basin, wharf, quays, and other relative works, in connection with the river and harbour of Glasgow, and thereafter to maintain and keep the same in repair; and further, (2) it ought and should be found and declared, by decree foresaid, that the defenders are not entitled to erect upon any part of the said lands any buildings or erections of the nature of public works, stores, warehouses, or dwelling-houses, or any other erections, except sheds, cranes, and others necessary for working a dock, basin or harbour; and (3) it ought and should be found and declared, by decree foresaid, that on a sound construction of the said disposition, the said lands were disposed by the pursuers and others, and acquired by the said Parliamentary trustees, the predecessors of the defenders, for the sole purpose of forming thereon a wet dock or tidal basin, and other relative works in connection with the said river and harbour of Glasgow, and that the defenders are not entitled to construct thereon a public quay or wharf facing the said river, for the purpose of landing thereat from the river Clyde timber and other goods, or to use the said lands as a timber store, or for any purpose other than that of forming thereon a wet dock or tidal basin, and relative works as aforesaid; and (4) it ought and should be further found and declared, by decree foresaid, that until the road called the Pointhouse Road is diverted by the defenders in manner provided for in the said disposition, the pursuers, their tenants, and possessors in the remaining lands of Stobcross, not conveyed by the said disposition, are entitled to access to the existing Pointhouse Road, through the lands conveyed by the said disposition; and (5) the defenders ought and should be decerned and ordained, by decree foresaid, within such reasonable period as may be fixed by our said Lords, to make and execute on the lands disposed by the said disposition, a wet dock or tidal basin, wharfs, quays, and other relative works in connection with the said river and harbour of Glasgow, and thereafter to maintain and keep the same in repair; and (6) the defenders ought and should be further decerned and

ordained, by decree foresaid, to remove all buildings, or other erections, which they or their predecessors have made on the said lands, with the exception of such us may be necessary for working the said dock or tidal basin; as also to cease to make use of the said lands as a timber yard or store, and immediately to remove therefrom all timber that may be stored thereon; and (7) the defenders ought and should be further decerned and ordained, by decree foresaid, to give to the pursuers, their tenants, and possessors in the remaining lands of Stobcross, not conveyed by the said disposition, access to the said existing Pointhouse Road through the lands conveyed by the said disposition, and that until the said road is diverted by the defenders, in manner provided for in the said disposition; and (8) the defenders ought and should be interdicted, prohibited, and discharged from erecting on any part of the lands disposed as aforesaid any buildings or erections of the nature of public works, stores, warehouses, or any other erections, except sheds, cranes, and others necessary for working a dock, basin, or harbour, and from constructing thereon public quays or wharfs facing the said river, for the purpose of landing thereat from the river Clyde timber or other goods, or for using the said lands, or any portion thereof, as a timber store, or any purpose other than that of forming thereon a wet dock or tidal basin, as aforesaid; and (9) the defenders ought and should be further interdicted, prohibited, and discharged, by decree foresaid, until the Pointhouse Road is diverted in manner provided in said disposition, from so inclosing the said lands as to prevent the pursuers, their tenants, and possessors in the remaining lands of Stobcross, not conveyed by the said disposition, from getting access through the lands thereby conveyed to the existing Pointhouse Road, reserving always to the pursuers all claim for loss and damage competent to them against the defenders, by and through the acts and proceedings of the defenders, or their predecessors, in the premises," &c.

The pursuers alleged that, since the date of the disposition, the defenders had done nothing in the way of executing the wet dock or tidal basin, or other relative works contemplated, and that latterly they had used the subjects in a way inconsistent with the terms and conditions of the disposition. "In or about the years 1854 and 1855 the defenders, or their predecessors, converted one portion of the lands of Stobcross disposed to them into a public quay or wharf, and also into a timber yard or store, and erected outer walls facing the river, cranes, and other works necessary for the working of a harbour and timber store, and inclosed the ground with a strong railing or palisade of about six feet in height, which is entered by a gate at the eastern end, said gate being kept locked at night. A considerable part of the remainder of the ground disposed to the said trustees, situated on the north side of the old Pointhouse Road, has also recently been inclosed by the defenders in the same manner as the other portion, and is now also used by them as a timber yard or store. The whole of the ground acquired by the said trustees as aforesaid, situate to the south of the Pointhouse Road, and a large portion of the ground situate on the north side of the same road, has thus been converted by the defenders, or their predecessors, into a quay or wharf fronting the river, and large public timber yard or stores, where the owners or storers of the timber occasionally sell the same by

auction on the ground, and the timber is delivered by the keeper of the yard or store, who is the servant of the defenders, to the order of the owners. Fixed rents are charged by the defenders for the storage of the timber, and they derive a considerable revenue therefrom. This use of the ground by the defenders was not contemplated by their predecessors, the said Parliamentary trustees, or by the pursuers at the time the said ground was sold to the former, and is in direct violation and contravention of the conditions and restrictions contained in the said disposition."

The defenders admitted that they had not yet constructed a wet dock or tidal-basin. They alleged—“(8) In the meantime, and with a view to the ultimate formation of the dock or tidal basin, and as of present importance and advantage for the shipping trade of Glasgow, the defenders and their predecessors have constructed, partly on the *alveus* of the river, and partly on the ground acquired from the pursuers, certain wharfs and quays fronting the river Clyde, and available for ships of large burden, being the outer wharfs or quays contemplated, and authorised by the Act of 1846, and which quays have been formed in contemplation of, and will ultimately form part of, and be used in connection with, the contemplated dock or tidal basin. These outer quays are in constant use, and produce a large revenue. With a view to the excavation of the ground behind, and the ultimate formation of the dock and basin, the defenders have an existing contract for the removal of soil, sand, gravel, and material in the said ground in the plans, and in the manner fixed by their engineers and surveyors. The defenders are not at present in a position, having regard to their funds, and the other demands upon them, to complete the construction of the contemplated dock or basin. (9) In the meantime, and until the dock or basin is constructed, the outer wharfs or quays which have been completed, and are in use, are partly employed for the unshipment of various kinds of foreign timber and deals. Considerable space is necessary for depositing the timber taken from the ships until it can be removed by its owners, and the defenders allow the timber and deals to be deposited upon a portion of the ground acquired from the pursuers. This is a mere temporary accommodation. Such accommodation, however, is a necessary part of a harbour or quay where timber is discharged. For convenience and protection, a temporary fence or paling is erected around the ground so used. The ground to the north of the Pointhouse Road is chiefly used for gardening or agricultural purposes, not being yet required in connection with the contemplated dock. A small portion of this ground is also used temporarily for the accommodation of cargoes of timber discharged until they can be removed by the consignees. In this sense it is used as an accessory of, and in connection with, the outer quay. (10) The disposition granted by the pursuers to the defenders' predecessors, dated 1st and 2d October 1846, does not impose any obligation on the defenders to construct a dock or tidal basin and relative works. It no doubt narrates the intended formation of such a dock or basin and works as one of the purposes for which the trustees were desirous to acquire the ground, and it imposes various restrictions prohibiting the trustees from erecting public works, dwelling-houses, or warehouses on the ground; but so long as the trustees observe the prohibitions contained in the dispositions, the pursuers have no

right to interfere. The trustees did not, and could not, bind themselves to the pursuers to construct the dock or basin, farther than they were bound by the Acts of Parliament. The Acts of Parliament were merely permissive and empowering, not obligatory."

The Lord Ordinary (ORMIDALE) pronounced this interlocutor:—“*Edinburgh, 27th June 1868.*—The Lord Ordinary finds that the allegations of the pursuers are irrelevant, and insufficient to support the action as laid, in so far as the pursuers conclude for decree of declarator, to the effect that the defenders are bound to make and execute, on the lands in question, a wet dock or tidal basin, wharves, quays, and other relative works in connection with the river Clyde and harbour of Glasgow, and thereafter to maintain and keep the same in repair; and in so far also as they conclude that the defenders should be decerned and ordained, within such reasonable period as might be fixed by the Court, to make and execute on the lands in question a wet dock or tidal basin, wharves, quays, and other relative works in connection with the river and harbour of Glasgow, and thereafter to maintain and keep the same in repair: Therefore assoilzies the defenders from said conclusions, and decerns, reserving in the meantime all questions of expenses: And in regard to the other conclusions of the summons, Finds that, before disposing of them, the disputed facts relating to them ought to be cleared up, and appoints the case to be enrolled, that parties may be heard as to the mode of inquiry or investigation to be adopted for that purpose.”

The pursuers reclaimed.

Solicitor-General (YOUNG) and A. MONCRIEFF for reclaimers.

CLARK and GIFFORD for respondents.

At advising—

The LORD PRESIDENT, after narrating the facts of the case, said that the conditions stipulated in favour of the sellers took the form of a direct prohibition against using the lands for any purpose but one, expressed with great clearness and force. In the disposition there was embodied a mutual contract with important consequences as to the rights of the property of the disponents and disponees for all time coming. The disponents were to be cut off from access to the river, and, unless the other party was put under conditions, they might be effectually excluded from the river by walls and other buildings. In that event, the remaining portion of Stobcross would be of no more value than if it had not been near the river at all. In the first place, therefore, there was a prohibition against erecting anything except in connection with the wet dock. Then a right of access to their other lands was reserved. Now, from 1846, the date of the disposition, down to 1867, it was alleged that no steps were taken by the defenders to apply the ground for the purpose for which it was destined by the Act of Parliament. Such a body as the defenders could not be tied down, unless by very strict terms, to execute the proposed works in any particular time. It must be left to themselves to say whether it was consistent with the public interest that such new works should be constructed, and the large discretion vested in them must not be hastily interfered with. But the pursuers complained of more than the non-execution of these works. They complained that some things had been done by the defender which were inconsistent with the disposition, and in particular with the

prohibition against any erection except for the purposes of the wet-dock. It was said that this ground had been used by the defenders as a loading place for timber; that ships are unloaded there, and timber not only loaded but stored there, and sold on the ground. And these statements were to some extent admitted by the defenders. The defenders' view of their right was that, until the time came when they should find it convenient to construct the dock, they were entitled to apply the ground to other harbour purposes, and in particular to afford accommodation for landing timber and storing it on the ground, round which they had erected a strong fence. The question was, was that consistent with their right and obligations as disponees? It was clear that, if they had unlimited discretion as to the time of constructing the dock, and at the same time were entitled to make this temporary use of the ground, that use might easily be converted into a permanent use. The right of the disponees would in that case be frustrated, and their security that the ground would be used for the specified purpose of making a dock would be nullified. That was, if enforced, a very good security for the fulfilment of the defenders' obligation. Therefore, to a certain extent, the pursuers must prevail in the declaratory conclusions. It would not do to give them a judgment in terms of the first declaratory conclusion, for that would tie down the trustees to construct the wet dock and basin within some limited time, and that would be too great an interference with the discretionary powers of the trustees. But if the defenders had violated the prohibition contained in the second declaratory conclusion, the pursuers had a good title to have declarator so far. And similarly in the admitted state of facts, the pursuers were entitled to decree of declarator in terms of the third and fourth conclusions. With regard to the other conclusions, the proper way probably would be to ascertain in some way the state of the lands. The present judgment would clear the rights of parties in the meantime, and *quoad ultra* the case, being remitted to the Lord Ordinary, would be dealt with by him.

LORD DEAS concurred.

LORD ARDMILLAN—In so far as the pursuers demand decree ordaining the Clyde Trustees now to make a wet dock, I am of opinion that we cannot give effect to that demand. There is no obligation imposed on the trustees which can be enforced as a present and definite obligation at this time, or at any precise and definite time which we can now assign, to construct a dock. So far I agree with your Lordships, and do not differ from the Lord Ordinary.

But, on the other hand, the lands were purchased for the express purpose, and, as the disposition itself bears, "for the sole purpose of forming thereon a wet dock or tidal basin and relative works." The employment of the land for other purposes is contrary to the intention of the purchase, and the meaning of the parties. It is plain that the making of a wet dock was not only considered desirable, but was part of the consideration agreed to be given for the lands sold—a consideration obviously of great importance, and tending to enhance the value of the lands retained. In a contract of sale every part of the consideration given or promised is onerous, and this stipulation in regard to the constructing of a wet dock is, in my opinion,

an important part of the consideration, and highly onerous.

The mode of enforcing it, and the time when it may become enforceable, is a matter in regard to which we have a different question.

But the obligation itself is, I think, onerous and effectual; and, looking to the position of the subjects and the object of the purchase, is not unreasonable.

On the other hand, the defenders, the Clyde Trustees, are administering a very great and important trust, and I cannot say that they have as yet neglected their duty in the matter. Much must be left to their discretion, and I do not see any reason to doubt that they will do what is right, and that their discretion will be fairly and judiciously exercised. At the same time, the position which they have now taken in answer to the pursuers' demand is singular. It was distinctly declared at the Bar to be their contention that they are under no obligation; that the time has not arrived, and never can arrive, when they shall be bound to make this wet dock. That is, they say that they are not, and never can be, bound to give the consideration of the contract—to do the only thing for which they purchased the lands. Such a result would, in my opinion, not be just. It would be contrary to the plainest equity.

It may be, that there are no materials to sustain a direct conclusion to enforce the construction of the wet dock at this present time, or indeed, at any precise time that can now be specified. This may be, and I am disposed to think that it is so; and that no direct decree for such enforcement can now be granted in this action. But then that is not conclusive; for the pursuers claim, apart from the petitory conclusions, a decree of declarator to the effect that the defenders, while refusing or delaying to construct the dock, shall not be permitted to use for their own purposes and profit the lands purchased for the special and only purpose of making the dock. This declaratory conclusion is founded on the second provision or condition of the disposition of the lands which has already been read by your Lordship.

I am of opinion, 1st, that this condition or provision is effectually made a "real lien and burden upon the lands;" and 2d, that it constitutes the legal protection of the pursuers against failure or delay on the part of the defenders in constructing the dock, and in fulfilling the consideration of the contract of sale.

This is the compulsitor by which the pursuers can enforce the right which, as sellers, they have to the consideration for which they sold their land. Were it not for this, the indefinite terms and character of the obligation to construct the dock would lead to the greatest injustice. It would entitle the defenders to hold the property without giving the stipulated consideration. This provision affords to the pursuers some redress against that injustice.

It is clear that the provision is framed with reference to the contemplated construction of docks, and that the only erections which the trustees are permitted to make on the land are those "necessary for working the dock, basin or harbour"—thus assuming or implying the previous making of that which, when made, was to be so worked. The 3d and 4th conditions of the disposition are also clearly and necessarily related to the intended dock, and have no meaning apart from the making of the dock.

Now, as I concur in thinking that the pursuers have no present redress by direct action to enforce construction of the wet dock by the defenders, and that the true meaning and intent of these conditions, particularly the 2d, is to afford to the pursuers an indirect compulsitor, then I cannot doubt that it is the duty of this Court to give effect to that condition and that compulsitor.

In the meantime, therefore, I think it sufficient to decern, as your Lordship proposes, in terms of the second and third declaratory conclusions, and also in terms of the conclusion in regard to the Pointhouse road.

LORD KINLOCH—It has from the first strongly occurred to me that the Lord Ordinary has taken too limited a view of the position of the pursuers.

I conceive that, on a sound construction of the disposition by the pursuers to the Clyde Trustees, it must be held that the consideration for the conveyance consisted not merely of the money price, but of the counter stipulations in favour of the pursuers under which the Trustees thereby came. Of these the leading condition was, that the lands conveyed should be used for no other purpose than that of forming "a wet dock or tidal basin;" and, in connection with this condition, the trustees expressly bound themselves that "there should not be erected upon any part thereof any buildings or erections of the nature of public works, stores, warehouses, or dwelling-houses; nor any other erections except sheds, cranes, and others necessary for working a dock, basin, or harbour." It was of essential importance to the value of the pursuers' remaining grounds that these stipulations should be carried out; and accordingly the deed goes on to provide for full access from these grounds, and the houses built on them, to the future wharfs around the dock, and for right to lay water-pipes and common sewers in connection with this dock, and the river in its vicinity.

A difference has now arisen between the parties as to the scope and meaning of these stipulations; such as warrants the interference of the Court to pronounce declaratory findings on the construction of the deed.

I am of opinion that the pursuers are not entitled to have it declared that the trustees are bound, either now or within any definite time which the Court may fix, to construct the dock or basin contemplated. The disposition contains no obligation on the trustees to construct the dock or basin at any definite period, or within any such time as may be fixed by the Court, or other tribunal; and no such tribunal could possess sufficient information to make it at all competent to determine the point. The period of construction of the dock was left, and rightly left, to the discretion of the trustees. And the Court is not entitled, under existing circumstances, to interfere with that discretion, although I think it should avoid any judgment which would absolutely preclude the pursuers from raising the question at an after period.

But although not entitled to a positive judgment to this effect, I think that the pursuers are entitled to a negative judgment to the effect that the trustees are not entitled to use the ground for any other purposes than that of constructing a wet dock or tidal basin, and are not entitled to put any erections on the ground except such as "are necessary for working" such a dock or basin. The pursuers are entitled to such a judgment, by the express terms of the disposition; and it is only by

enforcing these stipulations that they can exercise, and legitimately exercise, a *compulsitor* to the construction of a wet dock or basin in the vicinity of their ground, which directly they do not possess.

With regard to the special proceedings of which the pursuers complain, viz., the erection of quays or wharfs on the side of the river unconnected with any immediate construction of a wet dock or tidal basin, and, in combination with these, the devotion of the ground behind to a timber store, I am satisfied that such operations as these are not permitted, but, on the contrary, directly excluded by the disposition.

On the subject of the Pointhouse Road there does not seem any serious difference between the parties. And, on the whole, I am of opinion that the sound mode of disposing of this case is to pronounce substantially such a judgment as your Lordship in the chair suggests.

Agents for Pursuers—Wilson, Burn, & Gloag, W.S.

Agent for Defender—James Webster, S.S.C.

Tuesday, February 2.

HOGG'S TRUSTEES v. WILSON AND OTHERS.

Trust—Husband and Wife—Jus Mariti—Codicil. A testator left one-half of the income of his estate to his daughter, excluding by a general clause the *jus mariti* of her husband, and declaring the provision alimentary. By codicil he left the other half of the estate to his daughter, to that extent only altering the trust-deed, and declaring *quoad ultra* that if his daughter predeceased it should remain unaffected by the codicil. On the death of the daughter, who survived the testator, the half of the estate left to her by the codicil was claimed by the husband. *Held* that the exclusion of the *jus mariti* extended also to the provision in the codicil.

Expenses—Judicature Act—Final Interlocutor—Directory Enactment. A final interlocutor was pronounced by the Lord Ordinary on 27th May repelling a claim in a multiplepinding, and making no mention of expenses. The Inner-House, on 18th November, adhered, giving expenses since the date of the Lord Ordinary's interlocutor. On 22d December the Lord Ordinary, on the motion of a successful party, found expenses due by the claimant whose claim stood repelled by the interlocutor of 27th May. *Held* (Lord Deas diss.) that that finding was incompetent, the Judicature Act, in conformity with previous practice, requiring the matter of expenses to be dealt with at the same time as the merits. But, by express reservation in the final interlocutor, the expenses may be subsequently dealt with.

Hogg, who died in 1847, by trust-deed and settlement dated in 1839, directed his trustees, to whom he conveyed his whole property, to pay equally to his wife and daughter, if they survived him, and to the survivors during their lives, the free income of the estate, declaring that if the daughter predeceased her mother, leaving lawful issue, such issue should succeed to the share payable to his daughter had she survived. On the death of the wife and daughter the whole free income to be paid to the issue. If his daughter left no issue, half of the income was to be paid to any one appointed