

mitted to the Sheriff to repon the appellant (defender) on such conditions with regard to expenses as should seem just. Their Lordships observed strongly on the delay which had occurred in the case during the repeated prorogations granted on consent of agents, and expressed an opinion that it was the duty of the Sheriff to prevent this. The procedure was a trap for litigants; for, when the defender's agent ceased to act after the long delays which had occurred, advantage was taken of this opportunity to get decree by default.

Counsel for Suspende — Rhind. Agent—William Officer, S.S.C.

Counsel for Respondent — Campbell Smith. Agent—William Spink, S.S.C.

Tuesday, January 16.

### FIRST DIVISION.

THE CALEDONIAN RAILWAY COMPANY v.  
GREENOCK AND WEMYSS BAY RAILWAY  
COMPANY.

(Case for the Railway Commissioners.)

*Process—Case for Opinion of the Court—Railways Regulation Act 1873—Remit to Amend.*

A Case having been sent by the Railway Commissioners under the Regulation of Railways Act 1873, for the opinion of the Court, they, in the absence in the statute of provision to remit for amendment if so required, following the precedent of a Case sent for opinion from the Court of Chancery (*Sir F. S. Arthur, Bart., and H. D. Seymour*, Nov. 5 1867, not reported), pronounced an interlocutor intimating what additional information was desired, and superseding consideration of the Case, "to enable the parties or either of them to apply to the Railway Commissioners to amend the Case in such manner as to remove the difficulty."

Counsel for Caledonian Railway—Lord Advocate (Watson)—Johnstone. Agents—Hope, Mackay & Mann, W.S.

Counsel for Greenock and Wemyss Bay Railway Company—Balfour—Asher. Agent—John Carment, S.S.C.

Tuesday, January 16.

### SECOND DIVISION.

SPECIAL CASE—YOUNG AND KIRKPATRICK  
(YOUNG'S TRUSTEES).

*Succession—Trust—Fee and Liferent—Vesting.*

A testator by trust disposition and settlement directed his trustees to pay an annuity to his wife, and the whole residue of income to his son, with power to the son to test upon the fee of the estate. If the son predeceased his mother, the whole income of the estate was to be paid to her during her life. On the death of the wife the trustees were to convey the whole estate to the son, if then alive, and if dead to his issue, if he

left any. Failing issue of the son, the estate was to be conveyed to such persons as the son might direct by any writing under his hand, and failing such direction to certain persons named in the trust deed.—*Held* that vesting did not take place till the death of the widow.

This was a Special Case for Mrs Young, widow of the deceased George Kirkpatrick Young of Glendoune, and John George Kirkpatrick Young, his only son, of the first part, and the same persons and others, as trustees under the trust-disposition and settlement and codicil after mentioned, of the second part. It was set forth in the Case that the late George Kirkpatrick Young died on 6th April 1874, leaving a trust-disposition and settlement and codicil thereto, dated respectively 20th May 1868 and 28th December 1871, both registered in Books of Council and Session on 24th June 1874. He was survived by his wife and an only son, John George Kirkpatrick, who was of full age—the first parties to the case. By the deed and codicil Mr Young conveyed his whole estates, real and personal, to the second parties as trustees, for the following purposes:—1st, Payment of debts; 2d, payment of an annuity of £400 in all to the widow, and to allow her the liferent use of the mansion-house of Glendoune, and shootings, &c.; 3d, payment of certain legacies; 4th, the trustees were directed, from the residue of the income of the estates, to pay to the truster's son, the said John George Kirkpatrick Young, such portion thereof as they might consider proper, and the truster expressed his wish that, by disposing of his railway and other stocks, and house in West George Street, Glasgow, the trustees might be enabled to pay off a debt of £5000 over the estate, and to build a farm-steading at Cairnhouse, and make a new road from Cairnhouse. The trust-deed proceeded—"After said debt is paid off and these improvements effected, the whole residue of income from my estate during the lifetime of my said wife shall be paid over to our said son, but with the rights and powers to him, as from and after my decease, of testing on the fee, as in article sixth hereof. *Fifth*, In the event of my said son predeceasing his mother, without leaving a widow or children, I direct in that event the free income arising from my whole estates, heritable and moveable, to be paid over to her during her life. *Sixth*, On the decease of my said wife, survived by our said son, I direct and appoint my trustees to convey over absolutely to him, in common form, the fee of the residue and reversion of my whole estates, heritable and moveable; and failing my said son, by his predeceasing his mother, but leaving issue, then to such issue, in such shares and proportions, and subject to such conditions and restrictions of liferent or provisions for his widow, or otherwise, as my said son may by any writing under his hand have directed, and failing such writing, then my trustees shall convey my estate of Glendoune and other lands in Ayrshire to the eldest son on attaining majority, or, if there be no son, to the eldest daughter on attaining majority, and the remainder of my estates to the other children equally, on their respectively attaining majority, with full power to apply the whole or any part of the income in their upbringing, education, and maintenance during their nonage; and failing issue of my said son, then to the persons he may have by any writing under his hand directed to