under the settlement of David Elles, broker in Saltcoats. Mr Elles left his estate, which consisted of some small houses, shop goods, and household furniture, to three trustees, of whom Mr Campbell is now the only survivor. The trustees were directed, after payment of debts, funeral expenses, &c., to pay over the whole produce of the estate to the truster's widow for the support of herself and her children; but in the event of her entering into a second marriage she was to receive only an annuity of £5, and the remainder of the produce of the estate was to be paid over to the truster's children for their maintenance. Mr Elles died in 1853, leaving four children, all in pupillarity, to whom the trustees were nominated by Mr Elles tutors and curators. From 1853 to 1857 the trustees allowed Mrs Elles to carry on her husband's business, and to draw the rents of the houses. But in 1857 she was married to Edward Magee. The two surviving trustees then arranged that as the children were all young, and as the estate was insufficient for their support, they should continue to live with their mother and Mr Magee, they having agreed to maintain the children on being allowed to draw the rents, which, it was stated, did not, after paying repairs and taxes, yield more than about £20. This arrangement was made by the trustees, not only as such, but also in their capacity of tutors and curators. The children lived with Mr Magee under this arrangement till about a year ago, and they now applied for Mr Campbell's removal on the ground that he had been guilty of improper conduct in culpably and wrongously allowing Mr Magee to uplift the rents instead of handing them over to them.

The Court to-day refused to allow a proof of the petitioners' averments, holding that, read in the light of the trustees' minutes, they were not sufficient to justify the trustee's removal. It was obvious that the trustees had no object as testamentary trustees to do anything that was not for the best interests of the estate and the children themselves. Of the prudence of what had been done it was not for the Court to judge, as the trustees were better able than they were to form an opinion on that matter.

Petition refused, with expenses.

THOMSON *v.* ADAM.

Counsel for Pursuers—Mr Gifford and Mr Macdonald. Agent—Messrs Robertson & Johnston, S.S.C.

Counsel for Defender—The Lord Advocate and Mr M'Lennan. Agent—Mr Eneas M'Bean, W.S.

David Thomson, fisherman in Pulteneytown, near Wick, sued Thomas Adam, joint agent at Wick for the Aberdeen Town and County Bank, for damages in respect of wrongful apprehension on a charge of theft. It was averred that on 17th October 1864 the pursuer had presented at the defender's bank a cheque for £80; that he received for the cheque four bank notes for £20 each; that shortly after he had gone home he was called on by the defender, who alleged that he had given him five notes instead of four; and that the defender thereafter gave information to the procurator-fiscal that the pursuer had stolen the £20, in consequence of which he was apprehended on that charge.

In the issue which the pursuer proposed for trial, he put the question whether the defender had wrongfully caused him to be apprehended. The defender objected that the issue ought to ask whether the apprehension had been caused maliciously and without probable cause.

LORD JERVISWOODE reported the case with an opinion in favour of the defender, which opinion the Court unanimously confirmed, finding the pursuer liable in the expense of the discussion.

MP.—NAPIER *v.* ORR AND OTHERS.

Counsel for James and Margaret Jane Orr—Mr Gordon and Mr Watson. Agents—Messrs Murray & Beith, W.S.

Counsel for Robert Orr—Mr Nevay. Agent—Mr W. Milne, S.S.C.

Counsel for W. S. Burns—Mr J. C. Smith. Agents—Messrs Ferguson & Junner, W.S.

This is an action of multiplepoinding raised by John Knox Napier of Letham, in the county of Lanark, for the purpose of having determined who had right to a provision in the settlement of his mother Mrs Napier, whereby she burdened her said son and the heritage left to him with a provision of £1300 to her daughter Mary, who became the wife of Robert Orr, cashier at Blantyre Works, and died in 1861 leaving four children, Robert, Mary, James, and Margaret Jane, who all claimed in this action, except Mary, who died in 1860, and whose interest was claimed by her husband William S. Burns.

In November 1864 it was found, 1st, that the provision in favour of Mrs Orr vested in her during her life, and having been created a real burden, that it was a heritable right; 2d, that the right was carried to and vested in the claimant's father Robert Orr by his marriage contract in 1837; 3d, that on the death of Robert Orr, which took place in 1851, the said provision descended to the claimant Robert Orr as his heir-at-law; 4th, that the said Robert Orr having collated the heritage of his father with his brother and sisters, the fund *in medio* (the foresaid provision of £1300) now belonged in equal shares to Robert Orr, James Orr, Margaret Jane Orr, and the party or parties in right of the deceased Mary Orr or Burns. With these findings the case was remitted back to the Lord Ordinary.

The Lord Ordinary (Ormidale) found that the claimant James Orr, as the younger brother and heir in heritage of Mrs Burns, was the party in right of the share of the fund which pertained to her, and therefore preferred him to two-fourth parts of the fund, and Robert Orr and Margaret Jane Orr to one-fourth thereof each. Robert Orr and William S. Burns both reclaimed.

It was argued for Burns, that although it had been found that the provision was heritable in its own nature, it had become moveable in consequence of the collation of Robert Orr, through which Mrs Burns became entitled to a share of it, and being moveable it had passed to him *jure mariti*. Both Robert and James Orr concurred in opposing this argument; but a second question arose betwixt them, which was, whether the provision was heritage or conquest. In the one case James was entitled to it as his sister's younger brother; in the other Robert was, as her elder brother.

The case was debated on Friday and Saturday, and to-day the Court intimated that as both points raised were of importance, it was desirable to have them argued in writing. Cases were therefore ordered.

OUTER HOUSE.

(Before Lord Jerviswoode.)

G. GREIG (INSPECTOR OF POOR, CITY PARISH OF EDINBURGH) *v.* HERIOT'S HOSPITAL.

Counsel for the Pursuer—The Lord Advocate and Mr Gifford. Agents—Webster & Sprott, S.S.C.

Counsel for the Defenders—The Solicitor-General and Mr Millar. Agents—MacRitchie, Bayley, & Henderson, W.S.

This was a case in which the Inspector of Poor of the City Parish of Edinburgh claimed poor rates from the Governors of Heriot's Hospital, in respect of those lands upon which the hospital stood, and the gardens, plantations, and parks attached to the same.

The LORD ADVOCATE (in the absence of Mr Gifford, his junior, who was engaged elsewhere) opened for the pursuer, and contended that by the Poor Law Act of 1845 (8 and 9 Vict. c. 83) all heritages were subject to this assessment except Crown pro-

perty or property held for public purposes by and for the Crown. He held that this case was regulated by the recent cases of the Mersey Dock Commissioners and the Clyde Trustees, both decided in the House of Lords, June 22, 1865.

Mr MILLAR, for the defenders, stated that up to 1845 the hospital had always been exempt from paying these rates, and that the immunity enjoyed up to that time had never been taken away. That the lands in respect of which poor rates were claimed were not subjects from which the hospital derived any rents or profit, and that by the constitution of George Heriot's trust his trustees were prohibited from deriving revenue from them. That the hospital was truly a charitable society, and that the uses for which it was established were truly public uses, through the benefit they afforded in aiding the poor, and thus relieving the poor's funds. And that as a charitable institution the hospital was in precisely the same position as manses, glebes, university buildings, and burgh and parish schools. In support of this, he cited the recent case of the University of Edinburgh, July 21, 1865; and the case of the Bakers' Society of Paisley, 6th December 1836, 15 S. 200.

The LORD ADVOCATE, in reply, observed that the decision in the case of the University of Edinburgh expressly turned upon the fact that the funds of the University were held for State purposes, and that the Crown had a strong interest in that institution, being patron of several of its chairs.

The SOLICITOR-GENERAL observed that if the pursuer's plea was well founded every church in Edinburgh, and every parish kirk and school throughout the kingdom, would be liable to poor rates; that the cases referred-to by the Lord Advocate were not to the question, that of the Mersey Dock Commissioners being founded on a point of English Law, and that of the Clyde Trustees resting on the fact that the property proposed to be assessed yielded a money revenue out of which poor rates were payable, and which was devoted by Act of Parliament to a special purpose — viz., the improvement of the navigation of the river Clyde. But no revenues were derived from the hospital or the grounds attached to the hospital, and the trustees in whom the property was vested could not employ the subjects to produce revenue without committing a breach of trust; and, in addition to this, the trustees of the hospital did not fall under the interpretation clause of the Poor Law Act of 1845, and were not owners in the sense of that clause, as not being in actual receipt of rents or profits from the subjects in question.

His Lordship having heard parties, took the case *ad avizandum.*

Wednesday, Nov. 15.

FIRST DIVISION.

LONGWORTH OR YELVERTON *v.* THE SATURDAY REVIEW.

Counsel for the Pursuer — The Lord Advocate and Mr J. C. Smith. Agent — Mr James Sommerville, S.S.C.

Counsel for the Defenders—The Solicitor-General and Mr Shand. Agents—Messrs Morton, Whitehead, & Greig, W.S.

Issues were adjusted for the trial of this action of damages for defamation on 18th July last—the last day of the summer session. The defenders on 31st July gave notice of trial for the Christmas sittings. When the Court met yesterday the pursuer moved the Lord Ordinary to fix a day of trial before himself on some day within three weeks, in terms of section 40 of the Court of Session Act. This motion was opposed by the defenders on the ground that the trial would be a long one, and that it was inconvenient for all parties that it should take place during the session. They also founded on the fact that they had obtained the lead by the notice of trial which they had given. To this the pursuer answered that she had no opportunity of making her present motion last session, and she had made it on the very first day of this session.

LORD JERVISWOODE reported the motion; and the Court, after a discussion, appointed the trial to take place before the Lord Ordinary on Monday, 4th December.

TROWSDALE AND SON *v.* N. B. RAILWAY COMPANY AND JOPP.

Counsel for the Pursuers—The Lord Advocate and Mr Moncrieff. Agents—Messrs Lindsay & Paterson, W.S.

Counsel for the Defenders—The Solicitor-General and Mr Shand. Agents—Messrs Dalmahoy, Wood, & Cowan, W.S.

The pursuers, who are contractors at Stockton-on-Tees, have the contract for the formation of the Peebles and Galashiels line, belonging to the system of the North British Railway. Under the contract, part of the work was to be completed on 1st July 1864 and the remainder on 1st January 1865. The contract contains a reference of all questions which might arise betwixt the contractors and the company to Charles Jopp, C.E., who was in the employment of the company.

Last year the pursuers raised an action of suspension and interdict, the object of which was to have Mr Jopp interdicted from acting under the submission clause in the contract. This interdict was asked on the ground that Mr Jopp was an officer of the company; and that in consequence of certain mistakes which had been committed by him, considerable delay was caused; that the contractors had an interest in the consequences of that delay by reason of the penalties provided in the contract for non-completion of the work within the stipulated period; and that the arbiter having himself caused the delay, could not impartially act as arbiter. Lord Barcaple refused the interdict, and the Second Division adhered.

The pursuers thereupon raised this action of declarator and interdict for the purpose of having it declared that the submission clause had become inoperative, but having Mr Jopp interdicted from acting under it. The ground of this action was substantially the same as that of the suspension and interdict; but, in addition, it was averred that Mr Jopp was disqualified because he had, before the contract was entered into, made for the railway company, as their engineer, a probable estimate of the expense of the line, and that the pursuers were not aware that he had done so when they signed the contract.

The defenders pleaded that the action was irrelevant. Lord Jerviswoode sustained this plea, and dismissed the action. To-day the Court adhered. It was held that there was no allegation that Mr Jopp had acted corruptly. If he does so, his award will be set aside; but it was not to be assumed at this stage that an arbiter, whom the parties themselves had selected because they had confidence in him would be guilty of corruption. In regard to the averment as to Mr Jopp having made an estimate, that was a thing which might be averred in every case of the kind, because an estimate was always made beforehand by the railway engineer.

OUTER HOUSE.

(Before Lord Ormidale.)

SUSP.—EARL OF MORAY *v.* REV. D. NICOL.

Counsel for the Earl of Moray — Mr Shand. Agents—Messrs Melville & Lindsay, W.S.

Counsel for Mr Nicol — Mr Patton. Agents—Messrs Adamson & Gulland, W.S.

This is a litigation which has been going on for some time between the Earl of Moray and the