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

minister of the parish of Dalgetty as to a grass glebe. In 1862 the minister got from the Presbytery of Dunfermline the designation of a grass glebe out of the Earl of Moray's lands. The Earl suspended on the following grounds—viz., 1st, The lands designed are not church lands; 2d, they are not grass lands, but arable; and 3d, the minister has already a grass glebe, which was designed to him in 1770. On this latter point considerable litigation took place, and ultimately the Inner House found for the minister, with expenses from the date of closing the record. The Earl then came forward and offered to the minister land adjoining his present glebe for grass for a horse and two cows, as the same should be fixed on by arbiters mutually chosen. He also agreed to give remuneration for the time the minister had lain out of grass, and it was agreed that the Lord Ordinary should decide the matter of expenses, in so far as not already fixed. The arbiters allowed seven acres imperial of land next the present glebe in lieu of that originally designed by the Presbytery, and £24 per annum as a surrogatum for the want of grass since the Presbytery's designation, and the case came to-day before the Lord Ordinary for the decision of the question of expenses. It was contended for the Earl of Moray that his whole pleas in the suspension had not been discussed; in particular, that the land originally designed by the Presbytery had not been proved to be grass land, and that the agreement by the Earl to give other lands and a surrogatum for the want of grass was such a compromise of the case as entitled him to be relieved of expenses, or, at all events, to have them greatly modified.

The LORD ORDINARY found that as the minister had practically succeeded in getting what he wanted, as there was no reason to suppose that he would at the first have refused what he has now got, and as he had never shown any desire for needless litigation, he was entitled to his full expenses.

Thursday, Nov. 16.

FIRST DIVISION.

SCOTT *v.* FORBES.

Agent for Pursuer—Party.

Agents for Defender—Messrs Morton, Whitehead, & Greig, W.S.

This action, at the instance of Mr Andrew Scott, W.S., against Mr Patrick Forbes of St Catharine's, for payment of business accounts, has been in dependence for some time. In June last, after remits had been made to the Auditor of Court and to an accountant, Lord Kinloch reported the case; and after hearing parties, the defender was appointed to lodge a minute of what he offered to prove in regard to the accounts sued for. This resulted in a minute being lodged by the defender, containing a statement of nineteen matters which he proposed to prove. To-day the Court, after hearing Mr Horn for the pursuer, and Mr Park for the defender, allowed the pursuer a proof of his employment by the defender, and to the defender a conjunct probation.

ADVN.—DINGWALL *v.* CAMPBELL'S TRUSTEES.

These were conjoined actions of poinding the ground advocated from the Sheriff Court of Fifeshire, one of which was raised against the advocator, James Dingwall, vassal of the lands of Tarvitmill, by his superiors, the trustees of the late Sir George Campbell of Edenwood, and the other at his instance against them. In the action at the superiors' instance payment of feu-duty was claimed; and it was not disputed by the vassal that feu-duty was due, but it was pled that he was entitled to retain a portion of it on account of minister's augmented stipend, which had been paid by him. The question therefore was whether augmented stipend which had been localled on the lands since 1780, when the feu disposition in favour of Mr Dingwall's ancestor was granted, was payable by the superiors or the vassal. This depended to some extent on the terms of the feu disposition, which declared that the lands were to be held "by the said John Dingwall and his foresaids free of all burden whatever other than the feu-duties." The disposition further conveyed to the vassal other lands "in real warrandice and security of relief and payment to the said John Dingwall," *inter alia* of all cess, minister's stipend, schoolmaster's salary, and all other public burdens imposed or to be imposed upon the said lands.

The Sheriffs decided in favour of the superiors; and the vassal having advocated, the Court in 1861 allowed a proof of the averments of the parties as to the usage which had followed upon the feu disposition. This proof having been led, parties were heard upon the whole case yesterday and to-day, and the Court intimated that judgment would be given to-morrow.

SECOND DIVISION.

ANNUITY TAX CASES.

AITKEN *v.* HARPER AND OTHERS,

AITKEN *v.* KING AND OTHERS.

Counsel for the Pursuer—Mr Clark and Mr Thoms. Agents—Messrs G. & H. Cairns, W.S.

Counsel for the Trustees—Mr Shand.

Counsel for the other Defenders—Mr Gifford and Mr John M'Laren. Agents—Messrs Peddie, W.S.

These cases, which we reported at the time of their hearing during the extended sittings, and which involve the question of the liability of the United Presbyterian Synod in the annuity tax assessment on account of their premises No. 5 Queen Street, were advised to-day.

The LORD JUSTICE-CLERK said—There are two actions before us at the instance of the collector of arrears of the annuity tax imposed by the statute of 1861 on the occupants of premises in the city of Edinburgh. I think it will be most expedient to dispose of the first action first, because it is liable to a serious objection which, if your Lordships agree with me, will be sufficient to throw it out. The action is laid on the statement that from 1848 to 1860 the premises No. 5 Queen Street have been occupied by the Synod of the United Presbyterian Church, formerly the United Associate Synod, and under the authority of the Synod, by committees, &c., and that their management has been committed to certain gentlemen who form the Synod House Committee. I think there can be no doubt of what is intended by this averment—it is intended to say that the occupant of the premises has been the United Associate Synod. The pursuer further says that the present representatives of the Synod are Dr King, the moderator; and Mr Beckett, the clerk; and the other defenders who form the Synod House Committee. It is not said that there is any occupation by that committee, or by any person but the Synod. One would have expected the conclusions of the summons to have been directed against the Synod; and if the conclusions had been so directed, and the Synod convened by some of its representatives, the action might have been well laid. But it is unnecessary to consider that question, because the Synod is not called. The conclusions of the summons are directed against Dr King, as moderator of the Synod, and as an individual, and against Mr Beckett as clerk, and as an individual, and against certain persons forming the Synod House Committee, and as individuals. The way in which liability is sought to be imposed on the defenders is—The defenders conjointly and