purposes of the works of the Merryflats Patent Brick Company."

Agents for Complainer—Murray, Beith, & Murray, W.S.

Agents for Respondents—Millar, Allardice, & Robson, W.S.

Saturday, June 27.

SECOND DIVISION.

SCOULLARS *v.* CRAWFORD & FULTON.

Issue—Reparation—Culpa. Form of issue adjusted to try an action of assythment founded on the alleged fault of the defenders, the pursuers alleging that the deceased was lawfully on the premises when he received the injury which caused his death.

This was an action of damages by the widow and children of a man who was killed by the falling of the roof of a shed in course of erection by the defenders. The pursuers averred that the shed fell through the fault of the defenders, and that the deceased was at the time "at work below the roof which fell, being then engaged in laying a line of rails through the shed." The defence was (1) a denial of fault, and (2) that the deceased had no business to be where he was when the shed fell.

The pursuers proposed an issue for trial, simply putting the question whether the deceased was killed through the fault of the defenders. The defenders objected to the proposed issue that it did not embrace the question whether the deceased, who was not in the defenders' employment, was at the time lawfully within the premises. They maintained that this ought to be put in issue, because, even assuming fault on their part to be proved, there was no obligation on them to pay damages to the pursuers unless it was also proved that the deceased was lawfully on the premises; and without this averment the action would not have been relevant. They referred to *Teasdale* v. *Monklands Railway Company*—Sc. Law Rep., ii, 6.

The Lord Ordinary (Ormidale) reported the point, with an opinion that the pursuers were not bound to take the issue contended for by the defenders.

Watson and Trayner, for the pursuers, argued that the whole case could be tried under the general issue of fault. They referred to *Frazer* v. *Younger & Son*, 5 Macph. 861.

Solicitor-General and Burnet, for the defenders, were not called upon.

The Court held that the pursuers were bound to take an issue as proposed by the defenders, and it was adjusted in the following terms:—

"It being admitted that the pursuer, Mrs Isabella Smith or Scoullar, is the widow, and the other pursuers are the lawful children, of the said deceased Andrew Scoullar.

"Whether, on or about the 4th day of December 1867, the said Andrew Scoullar, when engaged in laying a line of rails below a shed, then in the course of erection by the defenders, upon the west quay of the Albert Harbour, Greenock, sustained injuries, in consequence of which he died, by the falling of the roof of said shed, through the fault of the defenders—to the loss, injury, and damage of the pursuers, or any of them?"

Agents for Pursuers—Neilson & Cowan, W.S.

Agent for Defenders———Wm. Mason, S.S.C.

HOUSE OF LORDS.

Monday, June 8.

GREIG *v.* UNIVERSITY OF EDINBURGH.

(3 Macph. 1151.)

Poor-Rates—University—Assessment—Crown—Annual Value—Beneficial Occupation. The University of Edinburgh held liable in poor-rates.

Per Lord Chancellor. The general principle is, that, the Crown not being named in the assessing Statutes, and not being bound by Statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively in and for the service of the Crown, is not rateable to the relief of the poor.

The University buildings have an "annual value."

The University of Edinburgh brought an action in the Court of Session against the appellant, George Greig, inspector of poor of the City parish of Edinburgh, for declarator that they were not liable, either as owners or as occupants, to be assessed for poor-rates for the city parish of Edinburgh, in respect of the University buildings. The ground upon which the University claimed exemption was, that the buildings of the University were national or public property, or property dedicated to national or public purposes, and from the occupation of which no revenue was derived.

The Lord Ordinary (Barcaple) found against the pursuers, but the Second Division of the Court reversed, and decerned in terms of the conclusions of the summons.

This appeal was then presented.

Sir Roundell Palmer, Q.C., J. T. Anderson, and Turner, for appellant.

Lord Advocate (Gordon) and Mellish Q.C., for respondents.

At advising—

Lord Chancellor—My Lords, in this case an action of declarator was raised by the University of Edinburgh against the Parochial Board of the parish of Edinburgh, through their public officer, to have it declared that the University are not liable as owners or occupiers of the University buildings to any assessment for the poor-rate. The record was closed, but no proof was led; and, upon the averments on the record and consideration of the pleas in law, the Lord Ordinary assoilzied the defender from the conclusions of the summons. From that interlocutor a reclaiming note was presented to the Second Division of the Court of Session, to recall the interlocutor and declare in terms of the conclusions of the libel. The Court of Session pronounced an interlocutor to that effect, and from that decision of the Court of Session this appeal comes before your Lordships.

My Lords, two questions which are very different have been argued at your Lordships' bar. One of the arguments has been that the buildings of the University of Edinburgh were exempt from rateability on the score of what I may term Crown privilege,—irrespectively of any question as to value. The second ground of argument was, that they were exempt—or rather that they ought not to be rated—on the score of being of no annual value. I think your Lordships will be of opinion that these two questions must be kept distinct. If the argument of the respondents prevails on either of these grounds