

erty 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 manse, 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 Sommerleville, 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 Dalmahey, 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 Ormisdale.)

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