then there is no subject over which there can be a lien.

Lord DEAS concurred with the Lord President. There were two alternative conclusions in the summons. The trust has now come to a dead-lock, and the defender refused to concur in anything whatever. He showed from the correspondence that the defender had been asked either to assume new trustees, or to resign, or to concur with Mr Kerr, his co-trustee in denuding, but he would do nothing. The whole trust was a speculation with a view to profit, and was never intended to be permanent. The object of the parties was, after feuing out the ground, to put the profits of the speculation into their pockets, but the defender refused to allow this object to be carried out. He would do nothing at all. It seemed that there was some dispute betwixt himself and the trust as to the two feus held by him, which he cousidered of much more importance than the general interests of the trust, and in consequence of the defender's conduct opportunities for feuing are being lost. His Lordship was therefore clear that if the defender was not to be compelled under the second conclusion to denude, he ought to be compelled under the first to resign. He says the trust is a permanent one, and that he is entitled to obstruct it to the end of time, at least as long as he lives. The question is—Was it the intention of the parties that the trust was to last for ever, and devolve ultimately on the heirs of the survivor? If Mr Norrie should be the survivor this would turn out to have been a most unlucky thing for the other parties, unless his heir proved a more manageable person than he was. If it be true that Mr Norrie has a lien over the estate, he is entitled to keep it, and is not bound to take either personal or heritable security as a *surrogatum* for it. He is not even bound to accept the heritable bond suggested by Lord Curriehill. But if he got such a bond, he might be getting more than he has at present; for if Mr Kerr should chance to be the survivor, Mr Norrie and his heirs would be out of the trust, and yet these heirs would remain liable under his obligations. After Mr Norrie's death Mr Kerr, the survivor, would be entitled to sell the property, but if the heritable bond suggested was granted, his heirs would have a permanent security, which they would not have unless he survived Mr Kerr. The question just came to this—Is the trust permanent, or are the beneficiaries entitled to a deed of denudation, which will, of course, throw upon them a personal obligation to pay the feu-duty? His Lordship thought they were entitled to such a deed, consistently with all the objects and intentions of the trust. The deed was no doubt peculiar, but its terms were explainable by the fact, that though not intended to be permanent it was expected to last a considerable time, and the form of trust adopted was a very good one for the purpose, if the parties had just been sure that the trustees would be reasonable and pliable. Although there had been no trust, if the parties had entered into a feu-contract as *pro indiviso* feuars, the obligations on Mr Norrie would just have been the same as they are. It might be a question on which his Lordship would be sorry to give an opinion in this incidental way, whether where a title is taken by means of a feu-contract, the vassal and his heirs were liable to the end of time for the feu-duty, although there had been other vassals accepted by and entered with the superior. It might be the law that he was, but there was no decision to that effect. If, however, it is not, what is Mr Norrie's liability? He did not see that any great risk was incurred by Mr Norrie denuding, but if there was, he and the others had taken it on themselves for their own personal benefit, and it must remain.

Lord ARDMILLAN concurred with the majority, remarking that he thought there was no peril to be apprehended from denuding. He thought this peril was a kind of ghost which the defender had conjured up in his own mind amid a cloud of feudal subtleties to scare away the reasonable demands of the pursuers.

Wednesday, March 28.

GREIG *v.* HERIOT'S HOSPITAL (*ante, p.* 27).

Poor—Assessment—Exemption. Held (aff. Lord Jerviswoode) that the Governors of Heriot's Hospital are assessable for the poor in respect of the lands and heritages occupied by them for the purposes of the Hospital.

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

Counsel for Defender—Mr Patton and Mr Millar, Agents—Messrs MacRitchie, Bayley, & Henderson, W.S.

The question raised in this action is whether the lands and heritages situated in the City Parish of Edinburgh, and belonging to and occupied by the defenders, "the feofees of trust and governors of George Heriot his Hospital," incorporated by Act of Parliament, are assessable for the support of the poor. The inspector of the City Parish raised this action for the purpose of having it declared that they were, and the Lord Ordinary (Jerviswoode) decerned and declared as concluded for. His Lordship referred to the cases of Adamson *v.* the Clyde Trustees (22 D. 606, and 3 Macp. H. L. 100); Gardner *v.* Leith Dock Commissioners (2 Macp. 1234, and since affirmed by the House of Lords); University of Edinburgh *v.* Greig (3 Macp. 1151); Forbes *v.* Gibson (13 D. 341); and Bakers' Society of Paisley (15 S. 200). The defenders reclaimed, and the Court unanimously adhered.

The LORD PRESIDENT said—I think this is scarcely an open question. The argument in favour of exemption has been most forcibly and ingeniously put to us; but I think the principles which regulated the decisions of the House of Lords in the Mersey Docks case and in the cases from this country, as well as the principle of the recent decision of the Second Division in the case of the University of Edinburgh, finding that it was exempt, are conclusive in this case. I am not moved by the argument that there are here no owners. The trustees are in the beneficial occupation of the subjects, not the boys. The mere fact that the boys pay nothing is immaterial. It is said there is exemption because the institution is an educational and charitable one. But if this were a good argument it would lead to the exemption of the whole revenues of the Hospital, which is not contended for. Is the institution, then, a Crown or national one? I don't think it is in any sense. The fact of an Act of Parliament having been passed in regard to it for the purpose of extending, in consequence of exceptional circumstances, the benefits of the charity to objects other than those contemplated by its founder, does not make it a national institution if it was not so before. It is quite a usual thing to obtain an Act of Parliament to innovate upon the objects of a charitable trust such as this. It is not materially different from an estate bill introduced into Parliament for the purpose of getting the better of some difficulty which the law cannot remove without its intervention. This is not in itself a national institution. George Heriot left his means not only for a local purpose, but also for a limited purpose. No doubt it was said the institution was a national ornament, which was explained to mean not that the building but that the foundation was so—as a man may be said to be an ornament to his country without any reference to his physical appearance. I don't think this will do either. The nation contributed nothing to it, had no voice in its management, and has done nothing in regard to it except passing the Act of Parliament. It is said the institution has been hitherto exempt. That means that it has not hitherto been taxed. But it is to be remembered that before the passing of the Poor Law Act

the poor laws were for a long time very loosely administered, and exemptions were allowed for which there was no authority; and as regards the time since the Act was passed, the former loose practice may be said to have been continued. But this was quite insufficient to establish a usage in favour of exemption. The Lord Chancellor, in the case of the Mersey Docks, expressly said that charitable institutions were not exempt; and the law was now quite settled that nothing but property which belonged to the Crown was.

The other Judges concurred.

M'WILLIAM *v.* WATSON.

Reparation—Culpa. Circumstances in which held that a person who had sustained personal injuries was not entitled to recover damages, the injuries having been caused by his own negligence.

Counsel for Pursuer—Mr John Black. Agent—Mr W. H. Muir, S.S.C.

Counsel for Defender—Mr Gifford and Mr Gloag. Agents—Messrs A. G. R. & W. Ellis, W.S.

This was an advocation from Lanarkshire of an action for damages and *solatium* at the instance of the pursuer, a ship carpenter, against the defender as owner of the steamer Petrel, on account of injuries sustained by him while engaged in the execution of his duty as a carpenter in making repairs or alterations upon the paddle-wheels or paddle-floats of the said steamer while lying at the Broomielaw of Glasgow on 18th January 1864, and which injuries are alleged to have been caused through the culpable negligence or recklessness of those on board the vessel, acting under the defender, and for whom he is responsible, in having suddenly, and without any notice or warning to the pursuer, set in motion the engine or other machinery of the vessel, or caused the paddles to be moved, while the pursuer was in the paddle-box in the execution of his duty in making some repairs or alterations thereon, whereby the paddle-wheel of the steamer, whereon the pursuer was at the time employed, was set in motion, and the pursuer was carried round inside the paddle-box of the steamer, and crushed between the floats of the paddles, and had his right collar-bone and shoulder-blade broken, by which his system and constitution sustained a great shock, and his health has been severely impaired, and he has been permanently disabled and rendered unfit to earn a livelihood. The defence is that the pursuer did not suffer injuries to the extent alleged by him, and that, in so far as he did sustain injury, it was caused by his own negligence or recklessness by going into the paddle-box at an improper time, and without giving notice to the engineer that he was going which it is alleged, he ought to have done.

The Sheriff-Substitute (Smith) found, after a proof had been led, that in the month of January 1864 the pursuer was a ship carpenter in the employment of William Brocket; that on the morning of 18th January he was sent along with another ship's carpenter to do some work on board the Petrel steamer, of which vessel the defender is owner; that the pursuer went on board the Petrel soon after six o'clock on the morning of that day, and that he knew that she was intended to sail at ten o'clock; that part of the work which he had to do required him to go inside the paddle-box on the paddle-wheel, and that he did not begin that work till about nine o'clock; that it is the practice when parties go inside the paddle-box of steamers that they give or send notice of this to the engineer, to prevent accidents; that on said morning the pursuer went inside the paddle-box without giving or sending any notice to the engineer, who, about a quarter before ten o'clock, in ignorance that anyone was on the paddle-wheel, set the engine in motion; and the wheel at which the pursuer was working revolved and crushed the pursuer, who was severely injured; but that the injury to the pursuer was caused by his own carelessness and neglect, both in delaying his work within the paddle-box to so late an hour, and by going into the paddle-box without giving due notice to the engineer. In point of law he found that a party who suffers injuries caused chiefly by his own carelessness and neglect is not entitled to reparation; and he therefore sustained the defences and assoilzied the defender.

The Sheriff (Alison) altered this interlocutor, and found that in the circumstances of the case as proved, no fault was to be ascribed to the pursuer in obeying the orders of his employer to go into the paddle-box to make the necessary repairs, seeing he was never informed or made aware of any rule as to giving to the engineer notice of his going into the paddle-box to make repairs, and seeing that in the circumstances he was entitled to rely on receiving notice from the engineer of his intention to start the engine if the vessel moved before the advertised time of sailing, which was ten o'clock; that the engineer was clearly in fault and to blame—1st, for not making the pursuer aware of the alleged rule of any person going inside the paddle-box giving notice when he went in; 2d, for starting the engine and putting the paddle-wheels in motion, at least twenty minutes before tde advertised time for the vessel sailing at ten o'clock; 3d, for not giving notice to the pursuer when he half seen him about the paddle-box, and he was himself at the other paddle-box, that he was to start the engine twenty minutes before the advertised time of the vessel's sailing, so as to warn the pursuer to get out of danger. He therefore found the defender liable in damages, which he assessed at £100.

The defender having advocated, the Court unanimously recalled the Sheriff's interlocutor, and reverted to that of the Sherift-Substitute.

Thursday, March 29.

COLQUHOUN *v.* BUCHANAN AND OTHERS.

Salmon Fisheries Act—Roll of Proprietors—Reduction. In a reduction of a roll of proprietors of salmon fishings made up by the clerk, on the ground that it contained the names of persons who were not proprietors, action sustained, and issues ordered.

Counsel for Pursuer—Mr Patton and Mr Watson. Agents—Messrs Tawse & Bonar, W.S.

Counsel for Defenders — The Solicitor - General and Mr Hall. Agent—Mr James Macknight, W.S.

This is an action of reduction at the instance of Sir James Colquhoun of Luss, Baronet, and it is directed against Mr John Buchanan, of Carbeth, Miss Barbara Govane of Park, Mr Cooper of Ballindalloch, aud Mr Blackburn of Killearn; and also against his Grace the Duke of Montrose, Sir George Hector Leith, of Ross, Baronet, and Mr Galbraith, the Sheriff-Clerk of Stirlingshire, for their interest. The object of the action is to reduce and set aside the roll of proprietors, or alleged proprietors, of salmon fishings within the district of the rivers Clyde and Leven, as fixed and defincd by the Salmon Fisheries Act, 25 and 26 Vict. c. 97, which was prepared by the Sheriff-Clerk of Stirlingshire in pretended conformity with said Act. The ground of reduction is that the defenders do not possess the qualification required by the statute for admission to the roll, because they had no right to salmon fishings in the said district. There were also conclusions for reduction of various minutes of the proprietors so enrolled, and of the District Board elected by them.

The defenders Mr Buchanan and Mr Blackburn lodged defences, and stated the following pleas:—

"1. The action is incompetent, and cannot and ought not to be entertained in this Court, in so far as it seeks to set aside the right of the defenders to remain on the roll of proprietors of salmon fisheries in the said district of the rivers Clyde and Leven,