and heritages in the city, the Crown would have been exempted from paying any portion of such assessment; and that it makes no difference although the same object is appointed to be effected in a different form. But supposing that in that case the Crown would have had such immunity (and probably it would) this would have arisen only because the object would have been effected by the Legislature having thought proper to effect its object not by imposing on each proprietor of the lands and heritages a separate obligation to perform a specific piece of work on ground adjoining his own property, but by imposing a money tax on the community indiscriminately. And in the next place, these two modes of effecting the object would have led to essentially different results if in both cases such an immunity should operate; because, on that supposition, in the one case the foot pavement would be actually made or repaired, although the expense would be borne by the owners of other lands and heritages in the city, whereas, in the other case, that pavement would be left for ever unmade, or in disrepair.

The respondent farther maintains that the Crown is not bound to perform this obligation because it is not named in the statute as being the obligant. The rule that the Crown requires to be so named in a statute in order to render a burden thereby imposed upon it effectual is liberally interpreted. To use the words of Dwarris in his treatise on statutes (p. 525)—"Though it is said that the King shall not be bound by a statute (whether affirmative or negative) which does not expressly name him, yet, if there be equivalent words, or if the prerogative be included by necessary implication, it would seem to admit of a different construction." In my opinion, there are equivalent words in this statute in as much as it expressly requires the stripe of foot pavement adjoining the barracks to be made and repaired by the party who is named in the statutory Valuation Roll as being the owner of that land and heritage; and the Crown is the party who is named as being its owner in the document so expressly referred to by the statute. This express reference in the statute itself to the entry in that valuation roll for the name of the obligant upon whom this obligation is imposed, is fully equivalent to a nomination of that party in the statute. And it is necessarily implied that that party is to perform the obligation; because otherwise it would never be performed by any party, and the enactment *quoad* the subject in question would be a nullity.

I therefore think that the reasons of suspension ought to be repelled.

Lord DEAS—I agree with your Lordship in the chair. I am not prepared to say that all that belonged to the Crown in England belongs to the Crown in Scotland; for the Union was one between two equal and independent states, and there would be just the same ground for saying that all that belonged to the Crown in Scotland before the Union should now belong to the Crown in England. But, however that may be, since the Union the exemption of the Crown from taxation has been recognised in Scotland by a series of authorities both here and in England. The exemption of the Crown from all general taxation has long been recognised, and in the case of the Magistrates of Edinburgh (1850) it was decided that the same exemption applies to local taxes. That leaves only the question whether there is any difference in principle between the obligation said to be incumbent on all the proprietors, and the obligation calling upon them to do the same thing in the way of a local taxation. I don't see any sufficient difference. I think if the Crown is liable in one case, it is liable in the other. The pavement may be provided for by assessment, or in the way it is done here, but the burden laid on the Crown appears to me the same in both cases. It may be that if the Crown is not liable to repair the pavement there is no other provision for that purpose in the statute. But if that be so, that is only an omission in the Act. It may be that it has not been specially decided that the same rule applies in both. But is there any distinction? Suppose the case of statute labour. I don't know that the Crown is liable in statute labour. It consisted originally of a service by occupiers, and money was paid in lieu of it, which was just a conversion of this service. I don't see that the barrack-master would be liable in such service any more than he is liable to repair the pavement opposite the barracks.

Lord ARDMILLAN—If this case had turned on the direct right to levy a tax or assessment from the Crown, there is abundance of clear authority to support a decision in its favour. It is vain to raise that question now, for the cases have clearly settled it, and they clearly exclude the notion that in this year 1866, and in this United Kingdom, there is any different law in any part of the kingdom as to the obligation of the Crown. Since the Union the law must be the same in England as in Scotland. Further, I think that the right of the Crown to immunity from taxation, unless it is named in an Act of Parliament, or has consented to take on itself the obligation, is a very important part of the Royal prerogative, and eminently in accordance with sound constitutional principle, because it is the true counterpart of the right of the subject to be free from taxation imposed by the Crown without the assent of the subject, given by the representative body. It is most important to preserve this counterpart in our nicely-balanced constitution. And so I find it laid down in all the authorities, in England, from the time of Lord Kenyon and Lord Abinger down to the judgment of Lord Chief-Justice Cockburn in 1865; and in Scotland I find such distinguished Judges as Lord Fullerton, Lord Jeffrey, and Lord Ivory, concurring in 1850 in the same view. And, therefore, I think that there is no doubt that the immunity of the Crown rests upon established principle; and the second question is not attended with much difficulty. Is the mode of levying the tax in Glasgow to put the Crown in a different position there from what it is in Edinburgh or any other place? If the Crown is not liable for direct taxation, can a defeat of its constitutional prerogative be effected merely by a change in the mode of levying the assessment? That would be a very transparent artifice. It is just an indirect mode of doing indirectly what could not be done directly. Therefore, I think that this impost on the Crown is not lawfully laid.

Agent for the Crown—William Waddell, W.S.
Agents for the Respondent—Campbell & Smith, S.S.C.

BIRRELL *v.* M'CULLOCH, *et e contra.*

Arbitration—Ultra Fines Submissi. Circumstances in which held that an arbiter had not exceeded his powers.

These were conjoined actions for payment of a sum found due under a decree-arbitral, and for reduction of the decree. The parties were George

Birrell, commission merchant, Glasgow, and William M'Culloch, fishcurer and merchant, Glasgow.

The circumstances were thus stated in the note to the Lord Ordinary's interlocutor :—

"On 15th May 1862, the pursuer, George Birrell, hired his vessel, the Jessie Brown, to the defenders, Messrs M'Culloch & Fyfe, for the period of one month, from 19th May, at the freight of £150. The charter-party bears 'That the said steamer shall be delivered up by the charterers at the termination of this charter-party at Glasgow, Ardrossan, Bowling, or Ballycastle, in charterers' option ; and should she not be delivered to owner at expiry of one month, from being on her voyage, then £5 per day to be paid by the charterers for the extra time, and afterwards at the rate of £8 per day till she is delivered, unless the parties to this charter agree to a new charter party.' The meaning of this stipulation seems to the Lord Ordinary not obscure. The vessel was deliverable at the close of a month from 19th May. But she might possibly be then on a voyage ; and it was agreed that, till she completed her voyage, £5 per day was to be paid for the extra time. Any after detention was to be at the rate of £8 per day. On 17th June, the defender, M'Culloch, telegraphed from Liverpool a request for a week's further use of the vessel at the same rate per day, and this was acceded to. The vessel was, however, not delivered back to the owner till some time after the expiry of this week. It is said that she had met with an accident, which made some repairs necessary. The parties differed as to the entire sum to be paid to the owner. By the terms of the charter-party it was provided, 'That should any difference arise between the parties to this contract as to its terms, either in principle or detail, they hereby agree to refer the same for arbitration to Mr John Jamieson, fishcurer in Glasgow, whose decision will be final in all matters of dispute.' Mr Jamieson was accordingly applied to, and he pronounced the decree-arbitral for a balance as due to the owner, on which Mr Birrell now sues, and which Mr M'Culloch has brought under reduction. The ground of reduction is, in substance, that by the agreement made by telegram for an additional week's use, a new contract was made, not containing the conditions of the original charter-party, and, *inter alia*, not containing the the agreement to refer ; and that the arbiter had no power to enter on the matter decided by him."

The Lord Ordinary (Kinloch) repelled the reasons of reduction, and in the other action decerned against the defender as concluded for. In his note he observed :—"It appears to the Lord Ordinary that this ground of reduction is wholly untenable. Nothing was done by the telegram except to give the charterers the benefit of a fixed extra time for re-delivery—viz., a week additional, at the primary rate of £5 per day. To this extent the charterers were freed from any question as to the rate per day to be paid. In other words, the fixed period of the contract was prolonged for a week further. But this did not imply that the contract was qualified to any other effect, far less that it was entirely set aside. At the utmost, there was a qualification of the contract—there was no innovation. It had a supplementary clause added to it, nothing more. The Lord Ordinary considers the contract to have remained generally in undoubted validity ; and amongst its subsisting stipulations to be that providing for a reference to Mr Jamieson. It was said that by the reference clause, Mr Jamieson had only power to declare the terms of the contract, and could not issue a decree for a specific sum. The Lord Ordinary thinks this plea extravagant. A reference of pecuniary disputes implies a proper decree-arbitral for the sum found due. The pursuer, Mr Birrell, maintained that all challenge of the decree-arbitral was barred by the conduct of the defender in going on before the arbiter without objection. There were conflicting averments on this head. The Lord Ordinary has found no occasion to inquire into the matter of fact, being fully satisfied that, supposing the challenge to be open, it is destitute of good foundation on its merits."

M'Culloch reclaimed.

THOMS (GIFFORD with him) was heard for the reclaimer.

SPITTAL (CLARK with him) supported the Lord Ordinary's interlocutor.

The Court unanimously adhered.

Agent for Birrell—William Mitchell, S.S.C.
Agent for M'Culloch—William Officer, S.S.C.

SECOND DIVISION.

GLASGOW CORPORATION WATER WORKS COMMISSIONERS *v.* HENRY.

Arbitration—Lands Clauses Act—Expenses. Held (alt. Lord Ormidale) that in an arbitration under the Lands Clauses Act. the account of a clerk to the arbitration is a part of the expenses of the arbiters, which under Sect. 32 the promoters are in all cases bound to defray.

Mr Jardine Henry, trustee on the sequestrated estate of the late John Graham, Esq., of Ballagan, in 1862 claimed from the Glasgow Corporation Water Works Commissioners the sum of £1071, 14s. 6d. as compensation in respect of the construction of their works through lands the minerals of which, as he alleged, belonged to him. The claim was referred to arbiters, one of whom was named by each party.

The findings in the decree-arbitral were as follows :—"First, we, the said arbiters, hereby find no damages or compensation due to the said Jardine Henry, as trustee foresaid, under or in respect of the said deed of nomination by him, and nomination of arbiter by the said commissioners, or subject-matter thereof ; and, second, we, the said arbiters, hereby declare that the expenses of the arbitration, and incident thereto, shall be borne by the parties, in conformity with the provisions of the Lands Clauses Consolidation (Scotland) Act, 1845."

By section 32 of the Lands Clauses Consolidation (Scotland) Act it is provided :—"All the expenses of any such arbitration, and incident thereto, to be settled by the arbiters or oversman, as the case may be, shall be borne by the promoters of the undertaking, unless the arbiters or oversman shall award the same sum as, or a less sum than, shall have been offered by the promoters of the undertaking, in which case each party shall bear his own expenses incident to the arbitration ; and in all cases the expenses of the arbiters or oversman, as the case may be, and of recording the decree-arbitral or award in the books of Council and Session shall be borne by the promoters of the undertaking."

The Water Commissioners having been called on to pay the account of Mr William Traquair, W.S., the clerk to the reference, amounting to £92, 10s., they did so under reservation of their right to re-