words "primary authority;" but it did not occur to him that it was a difficulty in the way of their Lordships judging in this case, or a difficulty to which their Lordships could listen. It was an anomalous thing to sanction two forms for the celebration of the same sacrament; but when that was done the Church must give its authority for the use of each. It was not necessary that the Church should declare her preference for the one or the other, but that might be done; and the very utmost that might be said of these words "primary authority" was that the Church declared a preference. If there was a difference between the two as to the way in which the prayers were expressed, there would be room for a preference. He did not know but that the word "primary" might here be used as meaning only first in time; nor did he know the exact meaning of the word "authority" as it was here used. It might mean estimation, character, weight, or credit. Now, what was the meaning of the declaration in the article quoted in the canons, that it was an inherent power of the Church to ordain or abolish ceremonies or rights, except that the ceremonies and rights which were proper and according to sound policy at one time, and in a certain condition of the Church and men's minds, might not be so at another; and therefore it was in the power of the authority who ordained them to change and abolish them? The one office might be abolished, not because it was bad, but because the Church liked the other better. What was to prevent them forming a different opinion in 1863? The interval was a very great one from 1811 to 1863; and the preference, which was just and right, and according to the best interests of the Church, might be very greatly reversed in 1863. He believed that the expression "primary authority" was introduced in 1804 or 1811 very much as a matter of mere courtesy to two very distinguished men, by whom it was understood the words were first employed — namely, Mr Addison and Bishop Horsley. The Church still sanctioned the use of both offices, but they dropt the expression, which meant a preference of the one over the other; and Mr Forbes said that that was a violation of his civil rights, and that he was entitled to have it reduced as being a civil injury done to him. Now, that was really so idle a proposition on the part of the pursuer that he should not refer to it farther. The difficulty had occurred with respect to new congregations, as to whether they might adopt the English office at first, or adopt the Scotch first, and then apply to the bishop to change it. The Church in 1863, taking the matter into anxious consideration, urged to it by such pamphlets as those proceeding from quarters entitled to weight, such as Dean Ramsay, Bishop Ewing, and others, addressed themselves to the consideration of this matter; and they allowed the use of either the one or the other, according to the opinion of the incumbent and the majority of the congregation. But Mr Forbes said he had a civil interest, not merely that he should be permitted to use that which, on the whole, he preferred, but that he had a civil interest that the whole Church should have a preference for that one also. But the Church, which had a preference in 1811 and 1838 for that form, had not that preference now. The pursuer said that he might be exposed to deposition by the existence of these canons. How? He was going to violate them. He was not going to adopt the Book of Common Prayer of the Church of England—the sealed book adopted by the Scottish Episcopal Church. He was not going to follow it in the baptismal service and some others, and he would thereby be going in the face of the Church which had ordained these things to be used. He might be visited by Church censure. Really, what strange talking this was! Was the Church in 1863 not to be at liberty to ordain any ceremonies and rights it pleased—to ordain ceremonies as recorded in the Book of Common Prayer of the Church of England, instead of preparing new ceremonies and rights for itself? Certainly it was. Their Lordships could not listen to the suggestion that Mr Forbes had it in view to fly in the face of his ecclesiastical superiors; they could not hear him when he ventured to suggest that in this matter of ceremonies and rights ordained by man's authority he would ask their Lordships to interfere for his protection whatsoever. This now left him only one matter to which it was in the least degree necessary to refer; and that was the damages which the pursuer sought in this action, because the bishop of the diocese to which he belonged had refused to license a curate. It was the strangest proposal he had heard in this Court, that the law of Scotland should give him a right to license a curate. It was perfectly lawful, no doubt, to have a curate—lawful in the same way that things in other departments were lawful. There were kindness, courtesy, hospitality, and a great many other things, that were very lawful, very laudable, and very important, which a man might benefit from having, and might suffer from being denied, but in regard to which a court of civil jurisdiction could give him no assistance at all. If the bishop of his diocese had good reasons or bad reasons for refusing to license a curate for him, what in the world had the law of Scotland to do with that? Their Lordships were administering the law of Scotland, and they could not award anything but what the law permitted. It might not be wisdom on the part of a bishop not to license a curate who had a beard, or who did not have a beard, or one who belonged to a temperance society, or who did not belong to a temperance society, or would not subscribe the canons; but with these matters of wisdom or good taste he supposed their Lordships had no concern. Their Lordships might, as members of the public, condemn such conduct; but in this, one of the established tribunals of the country, what had they to do with a curate at Burntisland or whether the Bishop of St Andrews licensed him or not? If it was the misfortune of Mr Forbes to differ so much from his brethren that he would not approve of the canons, what could their Lordships do? They might tell him that they were sorry that his views were not in harmony with those of his neighbours; but they could do nothing for him in a court of law. Their Lordships never could have any concern with the rules of any voluntary ecclesiastical body except when property came to be the question, a man's reputation, or civil rights of any kind. Where a question related to a house, that was a matter of title; if it related to money, that might be a matter of contract; and their Lordships would consider that in the usual way. He concluded by saying that there was no ground for the present action, and that it was quite unmaintainable.

The case was taken to avizandum.

Tuesday, Nov. 14.

SUSP.—PEARSON *v.* LOCKHART.

In this case, which is a suspension of a charge for payment of a sum of money said to be due under a decree of the Court of Session, the Court ordered an issue.

DONALDSON *v.* FINDLAY, BANNATYNE, AND CO.

This case was to-day, after a full argument, taken to avizandum.

FIRST DIVISION.

PETN.—AGNES ELLES AND OTHERS FOR REMOVAL OF A TRUSTEE.

Counsel for Petitioners—Mr Scott and Mr Rhind. Agent—Mr A. Guthrie, S.S.C.

Counsel for Respondent—Mr Burnet. Agent—Mr John Thomson, S.S.C.

This is an application for the removal of Alexander Campbell, Saltcoats, from the office of trustee

under the settlement of David Elles, broker in Saltcoats. Mr Elles left his estate, which consisted of some small houses, shop goods, and household furniture, to three trustees, of whom Mr Campbell is now the only survivor. The trustees were directed, after payment of debts, funeral expenses, &c., to pay over the whole produce of the estate to the truster's widow for the support of herself and her children; but in the event of her entering into a second marriage she was to receive only an annuity of £5, and the remainder of the produce of the estate was to be paid over to the truster's children for their maintenance. Mr Elles died in 1853, leaving four children, all in pupillarity, to whom the trustees were nominated by Mr Elles tutors and curators. From 1853 to 1857 the trustees allowed Mrs Elles to carry on her husband's business, and to draw the rents of the houses. But in 1857 she was married to Edward Magee. The two surviving trustees then arranged that as the children were all young, and as the estate was insufficient for their support, they should continue to live with their mother and Mr Magee, they having agreed to maintain the children on being allowed to draw the rents, which, it was stated, did not, after paying repairs and taxes, yield more than about £20. This arrangement was made by the trustees, not only as such, but also in their capacity of tutors and curators. The children lived with Mr Magee under this arrangement till about a year ago, and they now applied for Mr Campbell's removal on the ground that he had been guilty of improper conduct in culpably and wrongously allowing Mr Magee to uplift the rents instead of handing them over to them.

The Court to-day refused to allow a proof of the petitioners' averments, holding that, read in the light of the trustees' minutes, they were not sufficient to justify the trustee's removal. It was obvious that the trustees had no object as testamentary trustees to do anything that was not for the best interests of the estate and the children themselves. Of the prudence of what had been done it was not for the Court to judge, as the trustees were better able than they were to form an opinion on that matter.

Petition refused, with expenses.

THOMSON *v.* ADAM.

Counsel for Pursuers—Mr Gifford and Mr Macdonald. Agent—Messrs Robertson & Johnston, S.S.C.

Counsel for Defender—The Lord Advocate and Mr M'Lennan. Agent—Mr Eneas M'Bean, W.S.

David Thomson, fisherman in Pulteneytown, near Wick, sued Thomas Adam, joint agent at Wick for the Aberdeen Town and County Bank, for damages in respect of wrongful apprehension on a charge of theft. It was averred that on 17th October 1864 the pursuer had presented at the defender's bank a cheque for £80; that he received for the cheque four bank notes for £20 each; that shortly after he had gone home he was called on by the defender, who alleged that he had given him five notes instead of four; and that the defender thereafter gave information to the procurator-fiscal that the pursuer had stolen the £20, in consequence of which he was apprehended on that charge.

In the issue which the pursuer proposed for trial, he put the question whether the defender had wrongfully caused him to be apprehended. The defender objected that the issue ought to ask whether the apprehension had been caused maliciously and without probable cause.

LORD JERVISWOODE reported the case with an opinion in favour of the defender, which opinion the Court unanimously confirmed, finding the pursuer liable in the expense of the discussion.

MP.—NAPIER *v.* ORR AND OTHERS.

Counsel for James and Margaret Jane Orr—Mr Gordon and Mr Watson. Agents—Messrs Murray & Beith, W.S.

Counsel for Robert Orr—Mr Nevay. Agent—Mr W. Milne, S.S.C.

Counsel for W. S. Burns—Mr J. C. Smith. Agents—Messrs Ferguson & Junner, W.S.

This is an action of multiplepoinding raised by John Knox Napier of Letham, in the county of Lanark, for the purpose of having determined who had right to a provision in the settlement of his mother Mrs Napier, whereby she burdened her said son and the heritage left to him with a provision of £1300 to her daughter Mary, who became the wife of Robert Orr, cashier at Blantyre Works, and died in 1861 leaving four children, Robert, Mary, James, and Margaret Jane, who all claimed in this action, except Mary, who died in 1860, and whose interest was claimed by her husband William S. Burns.

In November 1864 it was found, 1st, that the provision in favour of Mrs Orr vested in her during her life, and having been created a real burden, that it was a heritable right; 2d, that the right was carried to and vested in the claimant's father Robert Orr by his marriage contract in 1837; 3d, that on the death of Robert Orr, which took place in 1851, the said provision descended to the claimant Robert Orr as his heir-at-law; 4th, that the said Robert Orr having collated the heritage of his father with his brother and sisters, the fund *in medio* (the foresaid provision of £1300) now belonged in equal shares to Robert Orr, James Orr, Margaret Jane Orr, and the party or parties in right of the deceased Mary Orr or Burns. With these findings the case was remitted back to the Lord Ordinary.

The Lord Ordinary (Ormidale) found that the claimant James Orr, as the younger brother and heir in heritage of Mrs Burns, was the party in right of the share of the fund which pertained to her, and therefore preferred him to two-fourth parts of the fund, and Robert Orr and Margaret Jane Orr to one-fourth thereof each. Robert Orr and William S. Burns both reclaimed.

It was argued for Burns, that although it had been found that the provision was heritable in its own nature, it had become moveable in consequence of the collation of Robert Orr, through which Mrs Burns became entitled to a share of it, and being moveable it had passed to him *jure mariti*. Both Robert and James Orr concurred in opposing this argument; but a second question arose betwixt them, which was, whether the provision was heritage or conquest. In the one case James was entitled to it as his sister's younger brother; in the other Robert was, as her elder brother.

The case was debated on Friday and Saturday, and to-day the Court intimated that as both points raised were of importance, it was desirable to have them argued in writing. Cases were therefore ordered.

OUTER HOUSE.

(Before Lord Jerviswoode.)

G. GREIG (INSPECTOR OF POOR, CITY PARISH OF EDINBURGH) *v.* HERIOT'S HOSPITAL.

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

Counsel for the Defenders—The Solicitor-General and Mr Millar. Agents — MacRitchie, Bayley, & Henderson, W.S.

This was a case in which the Inspector of Poor of the City Parish of Edinburgh claimed poor rates from the Governors of Heriot's Hospital, in respect of those lands upon which the hospital stood, and the gardens, plantations, and parks attached to the same.

The LORD ADVOCATE (in the absence of Mr Gifford, his junior, who was engaged elsewhere) opened for the pursuer, and contended that by the Poor Law Act of 1845 (8 and 9 Vict. c. 83) all heritages were subject to this assessment except Crown pro-