

number, who were willing to take their orders from that court, to go on to the settlement of Mr. Young. He says, "We (that is, the Court of Session) neither try the qualification of the pre-entee ourselves, nor perform the ceremony of the collation; but WE GIVE SPECIAL AUTHORITY to ministers of unexceptionable character and station in the church, who are willing to discharge the duty under the obligation implied in their oath of allegiance, so as to complete in due form the admission of the presentee to his benefice." His Lordship refers to the plea that the jurisdiction of the supreme civil court could only reach the temporalities of the benefices, which the church admitted might be separated by the civil court from the spiritualities. He says, "There appears to be little doubt, that at a certain period in the last century, when ecclesiastical questions first were the subject of discussion in our courts, an opinion was entertained by lawyers of learning and reputation, such as Lord Prestongrange, Mr. Crosbie and others, that such a separation was in certain cases legitimate and competent, and admitted of no remedy in this court. But able as the persons were, they had not the benefit of the anxious and elaborate arguments which the questions have undergone in modern times, and which have thrown a light on cases of this nature that writers at no former period enjoyed." This is a remarkable admission from such a quarter. It might have been more ample; for it was not the mere opinion of individual lawyers, however eminent, such as "Lord Prestongrange, Mr. Crosbie and others," that was now to be set aside, but the principles upon which the law had been administered for nearly a century and a half. His Lordship, however, admits that it was a new light which guided the majority of the Judges in the Court of Session to those decisions which forced on the Disruption.

The case in which Lord Cunningham delivered the Note above referred to came under the consideration of the other Judges. Lord Ivory closes the statement of his opinion in the following terms: "It is indeed lamentable to look upon the shape which these questions are now assuming. Step by step it has come to this, that there is absolutely no one proceeding, however exclusively ecclesiastical in its own character it used to be considered, in which the civil court is not asked to interfere. It has been called upon to interdict church censures,—

to prevent the execution of sentences of suspension and deprivation,—in Me-Queen's, and other cases, interference, more or less direct, has been sought in regard to excommunication, and refusal of tokens for admission to the sacrament,—and now it is asked that the court shall suspend the majority of a Presbytery from the exercise of their whole ecclesiastical functions, and set up the minority to perform these functions in their stead. If this be within the power of the court, I really see no reason why it should not take upon itself at once, and directly, to adjudicate upon the collation and deprivation of ministers, as in any ordinary civil matter.

(Signed) "J. IVORY."

Lord Cockburn, in the same case, says, "I concur with Lord Ivory. What the pursuers demand is, in substance, either that the court of session shall give a new constitution to a Presbytery, or that it shall supersede the majority of the members, or that, though the majority may attend, it can only act in a way directed by the court which may dictate the proceedings, votes, and speeches of each individual. *My only difficulty is in believing that the pursuers are serious.*

(Signed) "H. COCKBURN."

Still in the same case, Lord Moncreiff says, "I entirely concur in Lord Ivory's opinion. And as the case of ordination to the pastoral office, and collation, is ruled by the statutes in terms equally express and imperative with that of the deprivation or deposition of ministers, I must apply to the case here raised upon that subject the same additional observations which I have made in my opinion in the case of Strathbogie. I must confess that I am altogether unable to understand the principle on which it can be thought possible for this court to sanction the demand made by the pursuers in their summons in this action. It in reality amounts, in the first instance, to a sentence of deposition or suspension from the spiritual functions of the ministry, to be pronounced by the Court of Session on the majority of the ministers and elders of the Presbytery of the Church, who have not been disfranchised by any legal process; and to the farther assumption, in the second place, by this court, of the power of ordaining to the holy ministry through the intervention of persons who, by the very showing of the demand itself, DO NOT CONSTITUTE A PRESBYTERY AT ALL. If this be competent, I know not what is incompetent, or