for refusing to settle Mr. Young, "An exception was made in the case of a court of justice, who were not answerable for an error in judgment, however injurious, as it followed from the nature of the discretionary power entrusted to them; *but when there was no discretion, as in the present case*, they were bound to perform the duty, and liable to the consequences. The Court of Session, *which was the superior*, had found that the Presbytery, *which was the inferior Court*, had acted illegally and in contravention of the law; and he had never heard of a case in which an inferior Court had been upheld in its refusal to obey ITS SUPERIOR COURT." Of course those Judges in the Court of Session who had entertained a very different view of the law, and who had expressed their opinions accordingly, felt themselves controlled by the judgment of the house of Lords, to which confessedly the Court in which they are Judges is subordinate. It is interesting, however, to observe how, while they bow to the decision, they express themselves as to the novelty of the views which have been thus sanctioned, and the extent to which the hitherto understood constitution and freedom of the Scottish Ecclesiastical Establishment have been thereby affected. Some specimens have been already given. It may be useful, still farther, to call attention to the following.

In giving his opinion on the Lethendy Case, Lord Cockburn states what he conceives to be the import of the decision of the house of Lords in the first appeal of the Auchterarder Case. He says, (Robertson's Report, P. 83.), "The doctrine seems to me to be, that except on the two points of trying and of ordaining, the Presbytery acts so little spiritually, that it acts subject to civil control. In short, that the claim of the Church indirectly to control the patron, by proceeding on tests of popular consent, in order to enforce the principle of non-intrusion, is without foundation in law; and that the Church, though free, *like any other inferior civil court*, to give its opinions in the first instance, is ultimately, like these courts, an instrument in the hand of the civil tribunal. This certainly leaves few traces of what I have hitherto been always accustomed to think the Church of Scotland. I am far from saying that it extinguishes, or even changes, that constitution; because I can admit the Church to have no constitution but what the law, as delivered by the courts, gives it. But it so essentially changes what I have till now believed to be its constitution, that I cannot wonder at a Presbytery committing the mistake of *walking by the old light*. Indeed, every particular part of this doctrine will probably require to be fixed by positive decision, before it will be generally received as law."

The same learned Judge says, in the Stewarton Case, in which he was again in the minority, "If the principle contended for by the suspenders be well founded, viz. that we can always enter the Church courts, and control their ecclesiastical acts where these appear to us to be illegal, then it seems to me that this result—namely, that the Church has no independence whatever, is inevitable.—This result is not avowed. On the contrary, it is deprecated. The suspenders profess the utmost reverence for the exclusive jurisdiction of the Church, in what they term its proper concerns; but they never give even a single example of what these concerns are And I find that they do not consider the Church's jurisdiction as exclusive, in what I deem its most purely spiritual region. For instance, they hold the Church to be entirely subject to this Court, at least in the form of damages, in giving or withholding ordination, in suspension, in deprivation, and in disposing of claims for seats in its own courts; in other words, throughout the whole admission, exclusion, and discipline of its ministers, and in the power of determining the composition of the tribunals, on which the whole business of the Church depends After this, I cannot fancy the act so spiritual as that the Court of Session cannot subvert it — It would be the greatest satisfaction to me, if I had one single such act specified"

In the same Stewarton Case, Lord Jeffrey, who was also in the minority, having referred to a variety of cases in which the Church had exercised its hitherto acknowledged right of appointing ministers *quoad sacra*, says, "But though, from the circumstances now referred to, the instances of those appointments have necessarily been few, I think they have been quite enough to fix their legality, and the true construction of the statutes under which they were made; and, in truth, that they are as numerous as, I think, could have been reasonably expected, although the power to make them had been engrossed in express terms in the statute-book. They were all made openly, and all without challenge; and when I find that the whole current of authority, from the days of Sir James Stewart down to Bankton and Erskine—Sir John Connel, (assisted, as i generally understood, by his venerable fa