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-