

to be good, notwithstanding of the reason libelled, founded upon the said nullity, in respect of the tenor of the said act of Parliament; but the Bishop desired to be further heard herein.

No 1.

Clerk, Hay.

Durie, p. 585.

1630. March 9. Mr. WALTER WHITEFORD against Sir JAMES CLELAND.

MR WALTER WHITEFORD being presented by the King to the Sub-deanry of Glasgow, together with the kirks of Calder and Monkland, that were parts of the Sub-deanry, sought letters conform. *Alleged* by Sir James Cleland, No letters conform upon the kirks of Calder and Monkland; because he and his author, the Earl of Haddington, were infeft in the patronage of the said two kirks, by two public infeftments, to which Mr Patrick Walkingshaw, Sub-dean for the time, consented; and so his infeftment, being conform to the 172d act of Parliament 1593, is valid. *Replied*, That ought to be repelled; because, the act 1593 is only extended to the patronage of kirks pertaining to the King; but the King was not patron of these two kirks, but of the Sub-deanry, whereof these kirks are parts and pertinents; and as the King could not have presented persons to these kirks, except they had been first dismembered from the Sub-deanry, and erected in several patronages, no more can he by infeftment dispoise the patronages of them, except they had been dismembered from the Sub-deanry, which they never were. *Duplied*, These kirks needed not to have been dismembered from the Sub-deanry; because, the time of infeftment given to the defender's author, they were the whole Sub-deanry, the temporality being annexed to the Crown, and the spirituality consisting of these kirks allenarly. *Triplied*, These kirks were not then the whole Sub-deanry, but parts thereof, because the Sub-deanry is a title and dignity of the Chapter, distinct from these kirks, which remained at that time unsuppressed, otherwise it could never have revived, except it had been of new erected; but in 1617, the temporality is restored to the Chapters, which importeth that the Chapters were then standing unextinguished.—THE LORDS repelled the exception, and granted letters conform to these two kirks, as well as to the Sub-deanry.

No 2.  
Presentation  
to a sub-  
deanry.

-Spottiswood, (PATRONATUS, &c.) p. 227.

\* \* \* Durie reports this case.

MR WALTER WHITEFORD being provided, by the King's presentation, to the benefice of the Sub-deanry of Glasgow, and seeking letters conform thereto, and to be answered of the fruits of the benefice, and specially of the fruits of

No 2.

the kirks of Calder and Monkland, which were the only two kirks, and the sole patrimony of the benefice, except some few lands, feued for a small duty, whereof there was no benefit; compared Sir James Cleland, and *alleged*, That this presentation by the King could not be sustained as a right, whereupon letters conform should be granted for the fruits of these two kirks; because, the right of presentation of these two kirks was disposed long before to the E. of Melross, who was infeft therein by the King's Majesty; to the which right Mr Patrick Walkingshaw, then Sub-dean and titular, consented, conform to the 172d act of Parliament 1593; likeas, Sir James, upon the Earl of Melross his resignation, was infeft in the same, and had presented persons to the kirk, who ought to be answered of the fruits of these two kirks, and not this pursuer, as presented to the Sub-deanry; for he *alleged*, That, if the Sub-deanry consisted of these two kirks only, as he alleged it did indeed, when the Earl of Melross acquired the same, *viz.* after the year 1587, at which time the kirks of the kingdom were all annexed to the Crown, then his right of presentation behoved to extend to the Sub-deanry, the whole parts thereof, *viz.* the two kirks falling under the same, *quia partes integrantes faciunt totum*; and if the dignity of the Sub-deanry comprehended any other than these two kirks, he was content that the pursuer should have the same, but for the fruits of these two kirks, disposed in patronage before, as said is, as presented to the Sub-deanry, he could not have the same; for, albeit chapters and dignities of chapter-kirks were restored, yet it was with the exception of rights of patronage, and other rights lawfully acquired, and this excepted one was so; *Ergo, &c.* And the pursuer *contending*, That the right of patronage of these two kirks disposed, as said is, to Sir James Cleland, was not valid in law, seeing the same being incorporated, and making up the Sub-deanry, they could not be disposed by the King, upon the Sub-dean's consent, except they had been first dissolved from the Sub-deanry, or else that the patronage of the Sub-deanry had been expressly disposed by the King; for the King had no right ever of the patronage of these two kirks, as several Rectories, but only the patronage of the Sub-deanry, which comprehended these kirks; so that the 172d act of Parliament 1593, anent the titular's consent, had no affinity with the case libelled; for that act is only for patronages of several kirks and rectories, which were at the King's presentation before, and these kirks were never at the King's presentation; and so he *replied*, That the right of patronage could not stay letters conform:—THE LORDS found this reply relevant, and that the two infestments of patronages of these two kirks could not hinder letters conform; but that the Sub-dean, presented by the King, ought to be answered of the fruit of these two kirks, and not the persons presented by Sir James to the said two kirks, in respect the same were not particularly dissolved, nor dismembered from the benefice of the Sub-deanry; neither was it found to be

sustained, albeit having the Sub-dean's consent; and so, in this judgment of letters conform, the said two heritable rights were everted.

No 2.

Agt. *Advocatur.*Alt. *Nicolson & Aiton.*Clerk, *Gibson.**Durie, p. 502.*

1632. — The L. of LUGTON *against* The L. of EDMONDSTON.

THE Laird of Lugton having comprised from the Laird of Ednam the patronage of Ednam Hospital, presents thereunto a Preceptor, from whom he takes an infeftment of the lands of Fallow, holding of the preceptory in James Pringle of Buckholme's name, and upon his infeftment pursues the tenants for their mails and duties. *Alleged*, They were tenants, at least possessed by tolerance of one Brakenrig, who was lawfully provided to the said preceptory by umquhile Andrew Laird of Edmondston, and by virtue thereof in possession 25 years. *Replied*, Any presentation Brakenrig had was null, in respect that no collation nor institution followed thereupon, which is necessary in all benefices; *2do*, It never came in Brakenrig's hands, but remained still with the Laird of Edmondston in his charter-chest, where it was yet lying, neither had ever Brakenrig done any deed as Preceptor, or was acknowledged for such. *Duplied, imo*, No necessity of collation; because not a benefice of cure; *2do*, Sufficient that the presentation was lawfully subscribed by the patron; and the defenders offered to prove, that Brakenrig was ever since in possession of a duty of 20 merks yearly from Edmondston. *Answered* to this last part, Not relevant; unless it were alleged, that these 20 merks were paid by virtue of some right (either feu or tack) set to Edmondston by Brakenrig; especially since the pursuer offered to prove, that Brakenrig paid all that time mail and duty to Edmondston himself.—THE LORDS repelled the exception, in respect of the second part of the reply, except the defenders would allege that duty of 20 merks to have been paid for some right made to Edmondston by Brakenrig. And for the first part of the reply, anent the wanting of collation, they passed it over, and gave it not an answer.—1632. *December 11.*—Next *alleged*, They were tenants to Sir John Stirling, who was infeft by Brakenrig, and by virtue thereof in possession. *Replied*, His infeftment was null, as proceeding *a non habente potestatem*; Brakenrig's right being found null for the cause foresaid. *Duplied*, The cause why Brakenrig's right was not found good, was because he had never done any deed as Preceptor, which now could not be said, he having given the infeftment foresaid. *Triplid*, That the infeftment could not sustain his right; because, after the pursuer's, which was given by a Preceptor lawfully provided, and no alleged possession of Brakenrig's, after the lawful provision of another, could make his null right valid.—THE LORDS

No 3.

Presentation  
of a preceptor  
to an hospital.