

it is, the patron here did present *debito tempore*, and could not present another, until the Bishop had rejected the former; so that what part of the six months was lost by the Bishop's delay, cannot be imputed to the prejudice of the patron.

THE LORDS ordained the point to be debated *in presentia*.

*Harcarse, (PATRONAGE.) No 649. p. 211.*

No 38.

1696. December 8.

PRESBYTERY OF FALKIRK *against* The Earl of CALLANDER and His TUTORS.

PHILIPHAUGH reported the Presbytery of Falkirk against the Earl of Callander and his Tutors, for declaring that he had lost the vice of presentation of the minister of Falkirk, (whereof he was patron,) both during this vacancy and the next, because he had neither qualified himself, nor applied it to a pious use within the parish. *Alleged*, That being the delinquency of the last Earl, it cannot prejudice his heir; because *in pœnalibus non datur actio in hæredem ex defuncti delicto*. *Answered*, The certification against misapplication of the stipend is not such a penalty as is intransmissible to the heir, but is rather *jus accrescendi* to the moderator of the presbytery, and a devolution; and if the last Earl had no right, he could not give his heir the same, and the tinsel was declared against the last Earl of Callander in his own time. THE LORDS declared against the heir in favour of the presbytery.

*Fol. Dic. v. 2. p. 47. Fountainball, v. I. p. 740.*

No 39.

1762. March 2.

THE PROCURATOR for the Church of Scotland, and the MODERATOR for the Presbytery of Ayr *against* THOMAS EARL OF DUNDONALD.

THE patronages of the parishes of Monkland and Prestick, within the bounds of the presbytery of Air, belonged of old to the abbacy of Paisley, and were purchased by the family of Dundonald from the Lord of erection of that abbacy.

These two parishes were afterwards united.

In 1662, the then Lord Cochran conveyed the patronage of Monkland to Blair of Adaintoun, in whose family it still remains.

In 1726, Thomas then Earl of Dundonald made a strict entail of his estate, including the patronage of Prestick; but this, notwithstanding, William the immediate predecessor of the present Earl, conveyed the patronage, for favour and affection, to Charles Dalrymple of Orangefield.

Mr William Walker, the last incumbent in these united parishes, having

No 40.

A patron having given a presentation, the person presented signified his acceptance by letter, but when he came to be settled, he declared his renunciation of the presentation, as he had since his acceptance got another. The