

## PATRONAGE.

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### No. 1. 1736, June 24. PATRICK MAXTON *against* MONCRIEFF.

THE Lords found themselves competent to judge of the legality of the admission of Ministers *ad hunc effectum* to determine whether they are entitled to their stipends, and continued the rest of the cause till to-morrow,—13th February 1735.

The Lords, (14th February,) found that a Presbytery refusing a presentation duly presented in favours of qualified persons, against which there lies no legal objection, and admitting another person as Minister, the Patron has right to retain the stipend, *rénit.* Newhall *et* Drummore. The President absent.

The Lords (20th February) repelled the objection that the right of patronage was not produced before the Presbytery, in respect of the answer that it was produced before the commission *debite tempore* before the settlement, (in which commission the Presbytery was not a party.) 2d July 1735, Adhered to this last interlocutor, having in the end of February adhered to the two former.

The Lords (24th June 1736) *nem. con.* sustained the objection to Lady Newark and Mr Moncrieff's title to the patronage at the time of the presentation, and during the vacancy, and therefore repelled the reasons of suspension and found the letters orderly proceeded.

### No. 2. 1747, June 4. DUKE OF MONTROSE *against* THE HERITORS OF STRATHBLAIN.

THIS parish was it seems a prebendary of the Provostry of Dunbarton, and the Provost had the patronage, and the patronage of the Provostry was in the family of Lennox, and was by King Charles II. given to the Dutchess of Lennox, in liferent, and to his natural son Charles Duke of Richmond in fee, which fee was afterwards purchased by Queen Anne, and from her by the Duke of Montrose; and stands infest in the patronage of the Provostry and haill prebendaries and chaplainries thereto belonging. The Dutchess appointed John Cunningham of Enterkin her agent and Provost of the said Collegiate Church for life, and upon the act 1690 abolishing patronages, he charged the heritors, and among others the last Duke of Montrose for payment of 600 merks, the statutory price of the patronage, who suspended, for that he himself had but a temporary right to the patronage, and that too from a liferentrix who was his own Patron, and neither the liferentrix nor fiar of that patronage was called or compearing. This question was compromised, and Enterkin got a decret of consent, and bearing so, upon his granting a renunciation of the patronage of Strathblain with absolute warrandice. This Duke of Montrose upon his foresaid infestment pursues declarator of his right of patronage of Strathblain, and reduction of the foresaid renunciation as granted *a non habente*, and as a dilapidation by Enterkin without consent of his Patron. Alleged for the defenders, He was the only

Patron at the time, and it was no dilapidation but a necessary act of administration to which he could have been compelled upon the statute. But we repelled the defence, and reduced, *me tantum renit.* 16th June, Refused a reclaiming bill without answers, 8 to 4.

No. 3. 1748, Nov. 19. MR CHARLES COCHRAN, PATRON OF THE PARISH OF CULROSS.

MR COCHRAN presented a Minister to the parish, but the Presbytery is going to settle another, and has appointed Thursday for the ordination; and the Patron presented a bill of advocacy, praying also for an injunction to the Presbytery to stop proceeding in the ordination of the other Minister, and Kilkerran, Ordinary, reported the bill to us whether he should appoint it to be answered. But we unanimously refused the bill as not competent.

No. 4. 1751, June 26. SAME PARTIES.

MR COCHRAN in February 1747 presented Trotter a probationer to be second Minister of Culross, which became vacant in November 1746, and produced a late charter from the Crown of the patronage on his own and Mr John Erskine's resignation, but the town of Culross claim the right of electing the second Minister by delegates chosen by them, as the first person who was ordained second minister of that Church in 1648 was elected, as appeared from the Presbytery books. The Presbytery moderated a call at large, which fell on Mr Fairnie, which was carried through the several Churches and was approved by them, but Fairnie refused to accept, and thereupon a new call was moderated and Mr Stoddart chosen. In November 1747 Mr Cochran pursued declarator of his right, and was opposed both by the Crown and the town of Culross. In November 1748 Stoddart was ordained Minister of the Church, and thereafter in the process with the Crown Mr Cochran condescended on a charter in the records to his authors in 1683, and at last in January 1739 obtained a declarator of his right; and now Mr Cochran pursues the heritors for the vacant stipends; and the defenders did not oppose as to bygones before Stoddart's settlement, but as to stipends after that time said there was no vacancy. The case was reported by Lord Justice-Clerk, and I was of opinion that Mr Cochran's right not being clothed with possession, and being disputed both by the Crown and the town, the Presbytery was not obliged to wait more than two years till he cleared his right, and therefore was for sustaining the defence. But the Lords thought that the opposition to Mr Cochran's right was affected and spirited up by the Presbytery, and therefore found that the Patron had right to the benefice, and preferred him to the Minister, *me renit.* Justice-Clerk, and Leven did not vote. *Pro* were Minto, Drummore, Strichen, Kilkerran, Murkle, Shewalton, Woodhall.

No. 5. 1752, Feb. 27. URQUHART *against* OFFICERS OF STATE.

MELDRUM as purchaser at the sale before us of the estate of Cromarty belonging to Sir George M'Kenzie, son of Sir Kenneth, produced a charter from the Crown in 1598 in favour of Sir William Keith, erecting 18 or 19 kirks that had been common kirks of the