

No 12.

Circumstances from which it was ascertained that the patronage of a particular parish belonged to the Crown.

1749. *January 31.* HAY of Lawfield *against* The OFFICERS of STATE.

JOHN HAY of Lawfield insisted in a declarator against the Officers of State for the interest of the Crown, of his being patron of the Parish of Cockburns-path, *pleading*, That he had right by progress to a charter in 1666 of *novodamus* upon a resignation of the barony of Old-Hamstocks, *Una cum advocacione donatione et jure patronatus ecclesie de Old-Hamstocks, cappellani de Cockburns-path, et hospitalis ejusdem*: That the present parish of Cockburns-path, excepting the barony of Old-Cambus, had been part of the old parsonage of Old-hamstocks, within which lay the chapel of Cockburns-path, the parson of Old Hamstocks being patron thereof: That it appeared from the register of the General Assembly 1581, Cockburns-path was then a parish-kirk, having its own minister; notwithstanding whereof, the parson of Old-Hamstocks retained his title over the whole benefice till the year 1708, when Lord Alexander Hay, the patron, brought an action on the act 25th, Parl. 1693, for restricting him to a stipend, in which he called the parson, and also the minister of Cockburns-path, and heritors of both parishes; and in respect the minister of Cockburns-path's stipend was formerly payable by the parson, allocated to him a stipend upon the teinds of Coskburns-path; and also allocated to the parson L. 310 out of the teinds, parsonage, and viccarage of Cockburns-path, other than those of the lands of Old Cambus. Lord Alexander also obtained a decret 1709, finding him, in virtue of act 23d, Parl. 1690, entitled, as patron, to the feu-duties of the kirk-lands of Cockburns-path; and the heritors of the parish had bought from him their teinds, in so far as not allocated.

Pleaded for the defenders, There are several points agreed betwixt the parties, to wit, that by the records of Assembly 1581, there were three distinct parishes, Old-Hamstocks, Old-Cambus and Cockburns-path; that these two last make now one parish, though the time of union cannot be determined: That there was within the parish of Cockburns-path a chapel, endowed with part of the teinds thereof, of which the parson of Old-hamstocks was patron, and that the pursuer is patron of Old-Hamstocks; but it is not granted that at any time Cockburns-path made part of the parish of Old-Hamstocks: The heritors of Cockburns-path derive from the pursuer right only to a small part of their parsonage, and one somewhat larger of the viccarage teinds, to wit, what formerly belonged to the chaplainry, and these alone he pretended to allocate; but their right to three-fourths of their teinds is derived from the nunnery of St Bathans; so that there is no presumption from the teinds belonging to the parson, that these lands made part of his parsonage; for in fact, they never did belong to him, but a small part to the chaplainry; and the Crown, in the years 1662, 1663, 1671, and 1682, presented to the parish of Cockburns-path.

Replied, The allocating the viccarage teinds to the minister, does not prove that Cockburns-path made no part of the parsonage; for the parson has right

to vicarage teinds, where there is not a perpetual vicar, who makes a separate titularity; and before this decret, part of the minister's stipend was paid out of Old-Hamstocks; which can only be accounted for, by the parish having made part of that parsonage.

On the report of this pleading, it was remitted to the LORD ORDINARY to hear parties' procurators on the right to the teinds, and from what parties they did flow.

Pleaded for the defenders, The right of three-fourths of the teinds of the parish belonged to the nunnery of St Bathans, and were set in tack to the Earl of Home in the year 1613, for his life and the lives of three heirs, and thrice nineteen years, by the prioress, then become a protestant and married, with consent of her husband the Commendator of Bewlie; and a decret of transumpt, 1632, of the said tack was obtained at the instance of Nicolson of Cockburns-path, assignee thereto.

The prioress also dispoed these teinds, 1622, to David Lindsay, son to the Bishop of Ross, who was infest therein 1623.

For the pursuer, There was never any possession upon this tack, and consequently it is but a slender evidence of the right of the teinds; on the contrary, the teinds of Cobkburns-path are partly allocated, as is said, by the pursuer, and partly possessed by the heritors, either without title, or by purchase from him. It appears that the minister was paid by the parson of Old Hamstocks, from a decret of augmentation at his instance, ratified in Parliament 1633, and by the modification 1708, when his whole stipend, as well as part of the stipend of Old-Hamstocks was localled on the teinds of Cockburns-path; and the whole lands in the parish, other than these of Old-Cambus, are burdened with this locality.

THE LORDS found, That the patronage of Cockburns-path belonged to the Crown.

Reporter, *Strichen.*

Act. *R. Craigie.*

Alt. *W. Grant. & Haldane.*

Clerk, *Justice-*

D. Falconer, v. 2. No 49. p. 47.

1749. February 25. HAY of Belton against The PRESBYTERY of Dunse.

JOHN HAY of Belton having right to the patronage of the parish of Dunse, by disposition from Hay of Drummelzier to the late Lord Blantyre, the present Lord's retour and disposition, presented 27th August 1748, Mr Adam Dickson probationer, who accepted 3d September of the same year.

The Presbytery of Dunse hesitated on Mr Hay's right, alleging him to be only trustee for Drummelzier, who was not qualified by taking the oaths to the Government, and so not entitled to present; whereupon Mr Hay deponed before them, to this import, that he was no trustee, but had the title for life, and had executed a deed obliging his heir to denude.

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A declarator at a patron's instance that he had presented in due time was sustained as competent.