

No. 64. lands, the Court thought the demand reasonable; but, as the *quantum* could not appear till the issue of the augmentation, they sisted farther procedure in the sale till the second Wednesday of June following.

Kilkerran, No. 11. p. 556.

1749. *January 4.*

The HERITORS of KIRKPATRICK-FLEMING *against* The MARQUIS of ANNANDALE.

No. 65.
A gift of patronage *cum decimis* found not to convey the teinds.

The heritors of Kirkpatrick-Fleming pursued the Marquis of Annandale, as patron, to sell them their teinds, at six years purchase; who produced a charter, 1663, containing this clause: "Una cum jure patronatus ecclesie parochialis de Kirkpatrick-Fleming, et decimis tam rectoriis quam vicariis ejusdem;" and contended, that, by the said charter, he had in him the title of the benefice, and consequently was only bound to sell at nine years purchase; for, at the date of this charter, the patron, as such, had no right to the teinds, and therefore the mention of them could only be thrown in on account of his being titular of erection; and the same charter contained the patronage of the Kirk of Johnston, without mention of the teinds, as he was only patron.

Pleaded for the pursuers: As patrons have not only the presentation of the Minister, but also an interest in the administration of the benefice, the stile of gifts of patronage is always, *Una cum decimis*, &c. and it has been an omission, that the patronage of Johnston was given without it; and in this same charter the clause occurs with regard to the kirk of Wamphry, which is a parsonage.

The Lords Commissioners decerned in the sale of the pursuer's teinds, parsonage, and vicarage, at six years purchase.

Act. Ferguson.

Alt. R. Craigie.

D. Falconer, p. 35.

1749. *July 19.*

DUKE of QUEENSBERRY *against* CARRUTHERS of Dormont, and Others, Heritors of the Parish of Middleby.

No. 66.
If competent to a patron to pursue a modification?

Found competent to a patron to pursue a modification and locality, though such process has rarely been pursued by a patron.

And the like process was sustained at the instance of the patron of the parish of Duffus, without any objection being made.

Kilkerran, No. 12. p. 557.