

tion, with forty years' possession by the person presented, completed the prescription; nor was there any hardship in this, because the real patron might bring his declarator, at any time within the forty years, against the person who usurped his right.

There was another question in this case, Whether or not the Crown could prescribe a right to patronage? It was not disputed but that the Crown had the benefit of the statute 1617, as well as a subject; but the question was, Whether the Crown could prescribe a right to patronages as to lands upon no other title than *jure coronæ*; for it was observed that there was a great difference betwixt lands and patronages. The Crown had originally a right to all the lands of Scotland; and no man could have a right to lands in this country that was not derived mediately or immediately from the Crown; but that was not the case of patronages, the greater part of which were originally in the subjects, either by building the church, giving the ground, or endowing it, according to the common brocard, *Patronum faciunt dos, edificatio fundus*; and, therefore, a man in Scotland may have a very good right to a patronage though not derived from the Crown; and my Lord Auchinleck observed, that in the most ancient charters there was no express grant of patronages, but they went along with the lands upon the ground of which the church was built. However, the majority of the bench seemed to be of opinion that the Crown was to be presumed patron *in dubio*, and where no other right appeared.

But the case here was, that this patronage appeared to have been originally the property of the Earls of Douglas, one of whom, in the year 1451, granted a charter disposing the same to a predecessor of the Earl of Home, which charter was confirmed by a charter under the Great Seal, in 1458. As, therefore, the Crown appears never to have had any right to this patronage, or, if it had, being divested by the charter of confirmation above-mentioned, and never afterwards reinvested, it was pleaded that the Crown had no title of prescription.

It carried by a majority of one in favour of the Earl; but, as there was a question about the interruption of prescription, it is difficult to say upon what point the Lords put their opinion,—whether upon the defect of title in the crown, or the interruption.

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1758. *August 2.* CLAIM UPON THE ESTATE OF CROMARTY.

IN this case the Lords unanimously determined, that, if a man gives a disposition of his estate, with full powers to alter, innovate, charge with debt, &c. or with the power of redemption upon payment of a rose noble, after the old fashion, it is not in the power of such dispositive to contract debts; but the debts so contracted will fly off upon the disposition's being revoked or the faculty of redemption exercised.

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