

choice of a seat in the church, and likewise of the dimensions claimed by him."

No 20.

A. C.

Fol. Dic. v. 4. p. 54. Fac. Col. No 7. p. 13.

1772. June 16.

SNODGRASS, &c. *against* LOGAN.

No 21.

WHERE the patronage of a kirk is lodged in a collective body, which having differed in choice, splits into two parties, and each party gives a separate presentation, the Court of Session is competent to decide which shall be preferred.

*Fol. Dic. v. 4. p. 51. Fac. Col.** * * This case is No 95. p. 7374., *voce* JURISDICTION.1777 July. BRODIE of Lethem *against* EARL of MORAY.

THE parish of Kinloss had been erected in 1661, out of parts of the two adjoining parishes of Alves and Rafford, whereof the patronage of the former belonged to the Earl of Moray, and that of the latter to Brodie of Lethem and Lord Spynie alternately. Mutual declarators were brought by the Earl and Miss Brodie of Lethem, to ascertain the right of patronage on a vacancy in 1777; and the Duke of Gordon, in right of Lord Spynie, sisted himself in the process. *Urged* for Miss Brodie, That she was unquestionably entitled to an alternate right to presentation, agreeably to act 1621, c. 5. and 1617, c. 3.; and the Earl of Moray having confessedly presented the last minister, it was now her turn. *Contended* for the Earl; That supposing Miss Brodie to have had the sole right to the patronage of Rafford, instead of only an alternate right with Lord Spynie, she could not now claim a title to any part of the patronage; for two thirds of the stipend is paid out of lands in the old parish of Alves, where the church itself is situated. At any rate, the Earl's right is established by the positive prescription, and that of Miss Brodie cut off by the negative. The first minister was settled by popular call in 1657, while patronage stood abolished; the second was presented by the Earl of Moray in 1665; the third in 1670, in virtue of a letter from the Bishop of Moray, which it may be presumed, was in consequence of a presentation from the Earl; the fourth was settled while patronage again stood abolished by law; and the last incumbent was presented in 1750 by the Earl of Moray, although Brodie of Lethem, now for the first time, protested, that his right should not thereby be prejudiced. *Answered* for Miss Brodie, That the only act of presentation by the Earl of Moray, except the last, was that in 1665; the next, in 1670, there was equal reason to presume had been in consequence of Lethem's presentation as that of

No 22.

Alternate right to present.