

P A T R O N A G E.

S E C T. I.

Nature and Extent of the Right.

1630. *March.* BISHOP OF DUNKELD *against* LORD BALMERINOCHE.

THE Bishop of Dunkeld pursues the Lord Balmerinoch for reduction of the infestment of the patronage of the kirk of Cramond, granted to his father by the King, by resignation of the said kirk in the King's hands by Peter, Bishop of Dunkeld, with consent of the Chapter, for two reasons; *1mo*, Because the said kirk was a mensal-kirk, pertaining to the patronage of the bishoprick, which, by the law, both civil and canon, cannot be disposed from the bishoprick; *2do*, The resignation was not subscribed by the most part of the Chapter living for the time. To the *first* reason, That the Bishop had no interest to pursue this action of reduction, because this kirk was disposed from the bishoprick by the resignation, and the King's disposition of the patronage thereof to the defender's father, and the said infestment ratified in Parliament, wherein the Bishops were restored *in anno* 1606, wherein such dispositions of patronages, made by the lawful titulars and the King's Majesty, and ratified in Parliament, were specially excepted; to which it was *replied*, That the exception contained in the act of Parliament was to be understood only of patronages of kirks, whereof the presentation pertains to the Bishops, and not of their mensal-kirks.—THE LORDS assoilzied from the first reason.

No 1.
The exception in the act 1606, restoring Bishops, was found to be understood of patronages, as well of mensal-kirks, as of those of which the presentation belonged to the Bishop.

Fol. Dic. v. 2. p. 49. Auchinleck, MS. p. 116.

* * Durie reports this case.

No 1.

1631. *March 25.*—IN a reduction of a right of the patronage of the parsonage teinds of the kirk of Cramond, made by the King's Majesty to this Lord Balmerino's father, upon resignation of these teinds made by Mr Peter Rollock, Bishop of Dunkeld; of the which bishoprick the said kirk of Cramond was a proper patrimonial kirk, and the Bishop was not patron thereof, but the same was a mensal-kirk, pertaining to him; the reason was, that the mensal-kirks could not be disposed, and that there was no dissolution thereof in Parliament from the bishoprick, and that the resignation thereof made by the Bishop was not done with the consent of the most part of the Chapter, which was necessarily required thereto, and without which it could not be necessarily disposed. And the defender *alleging*, That his right of the patronage of this kirk could not be quarrelled; because, in the 2d act, Parliament 1606, whereby the Bishops are restored, special exception is made of patronages of kirks pertaining to Bishops, disposed by lawful titulars, and confirmed in Parliament; and this kirk of Cramond was resigned, as said is, by Bishop Rollock, being then lawful titular, in the King's Majesty's hands, and thereupon the presentation and patronage thereof were disposed to the Lord Balmerino by the King, which was ratified in the same Parliament 1606, and declared then by the Estates to be reducible upon no ground or cause, at no time thereafter. And the pursuer *answering*, That that exception extended only to patronages of kirks, which patronages were at Bishops' presentation, and not to the kirks pertaining in patrimony to Bishops, as this kirk libelled, which was not a kirk at the Bishop's presentation, but his own proper mensal-kirk, and so fell not under the exception; and, further, albeit the exception might extend thereto, yet that exception must be understood of kirks lawfully disposed, and makes not dispositions, which were not lawful, to become valid, if they were invalid, or had nullities before the confirmation; *nam confirmatio nihil novi juris tribuit*; likeas the act in that same Parliament, *S. lvo jure cujuslibet*, gives warrant to parties having interest to claim their rights, notwithstanding of any act done in that Parliament, to any private person's prejudice; and by act of Parliament 1617, James VI. it is appointed, that the Lords of Session may judge upon writs ratified in Parliament, which they could not do, if that the confirmation supplied the defects and nullities thereof. THE LORDS found, that this exception extended to kirks pertaining to the patrimony of Bishops, which were so ratified in Parliament, as the exception requires, as well as to kirks at Bishops' presentation, without distinction; and also concerning the nullity of the right, alleged confirmed in Parliament, if the confirmation excluded the party to propone any nullity or not; they found, that, in respect of the act of Parliament, which declares the Lord Balmerino's right to be irreducible thereafter, *ut supra*, they found the said right

to be good, notwithstanding of the reason libelled, founded upon the said nullity, in respect of the tenor of the said act of Parliament; but the Bishop desired to be further heard herein.

No 1.

Clerk, Hay.

Durie, p. 585.

1630. March 9. Mr. WALTER WHITEFORD against Sir JAMES CLELAND.

MR WALTER WHITEFORD being presented by the King to the Sub-deanry of Glasgow, together with the kirks of Calder and Monkland, that were parts of the Sub-deanry, sought letters conform. *Alleged* by Sir James Cleland, No letters conform upon the kirks of Calder and Monkland; because he and his author, the Earl of Haddington, were infeft in the patronage of the said two kirks, by two public infeftments, to which Mr Patrick Walkingshaw, Sub-dean for the time, consented; and so his infeftment, being conform to the 172d act of Parliament 1593, is valid. *Replied*, That ought to be repelled; because, the act 1593 is only extended to the patronage of kirks pertaining to the King; but the King was not patron of these two kirks, but of the Sub-deanry, whereof these kirks are parts and pertinents; and as the King could not have presented persons to these kirks, except they had been first dismembered from the Sub-deanry, and erected in several patronages, no more can he by infeftment dispoise the patronages of them, except they had been dismembered from the Sub-deanry, which they never were. *Duplied*, These kirks needed not to have been dismembered from the Sub-deanry; because, the time of infeftment given to the defender's author, they were the whole Sub-deanry, the temporality being annexed to the Crown, and the spirituality consisting of these kirks allenarly. *Triplid*, These kirks were not then the whole Sub-deanry, but parts thereof, because the Sub-deanry is a title and dignity of the Chapter, distinct from these kirks, which remained at that time unsuppressed, otherwise it could never have revived, except it had been of new erected; but in 1617, the temporality is restored to the Chapters, which importeth that the Chapters were then standing unextinguished.—THE LORDS repelled the exception, and granted letters conform to these two kirks, as well as to the Sub-deanry.

No 2.
Presentation
to a sub-
deanry.

-Spottiswood, (PATRONATUS, &c.) p. 227.

* * * Durie reports this case.

MR WALTER WHITEFORD being provided, by the King's presentation, to the benefice of the Sub-deanry of Glasgow, and seeking letters conform thereto, and to be answered of the fruits of the benefice, and specially of the fruits of