

right after lapse of six months to present, or to settle *pleno jure*; and the Court would not take notice of what method they chose or making the settlement, whether by moderation of a call or otherwise, since that was not prescribed by the law: That the declarator nowise affected their power of trying or admitting a minister; and though taken ill by the Presbytery, was rather a favour to them, in that, by being brought before a final settlement, it gave them an opportunity of being satisfied, whether there was here a regular presentation, that they might not by mistake make a settlement in opposition thereto; the consequence of which would be, that the minister settled would have no legal title to the benefice, as was found in the case of the Minister of Auchtermuchty, though in that case, happily for the minister, there proved to be a defect in the patron's title: That the patron had deponed he was no trustee, and if he were, it did not hinder him to present.

*N. B.* There was another disposition produced from Drummelzier to Belton; to which it was *objected*, that he had not deponed, whether that disposition were in trust.

It was *said* on the Bench, it might be an objection, if a patron held in trust for an unqualified person; and some LORDS doubted of the competency of the action, if the Presbytery had not improperly sisted themselves.

THE LORDS adhered to the Lord Ordinary's interlocutor, (and found that the general words, *decern and declare*, can go no farther than the particulars determined).

Petitioner, *R. Craigie.*

*D. Falconer, v. 2. No 65. p. 68.*

1751. July 10.

LOCKHARTS of Lee and Carnwath *against* The OFFICERS of STATE.

JOHN LOCKHART of Lee, and George Lockhart of Carnwath, insisted each in a declarator against the Officers of State, of their severally having right to the patronage of the parish of Lanark.

*Pleaded* for Carnwath, King James VI., 27th March 1604, erected the priory of Inchmaholm, and the abbeys of Cambuskenneth and Dryburgh, into a Lordship, to be called Cardross, in favour of the Earl of Mar; together with the right of patronage of the kirks belonging to these prelacies; particularly disposing these kirks, and amongst them that of Lanark. The disponsee was infest 1605, and the grant confirmed in Parliament 19th July 1606.

The Earl of Marr 1612 disposed this estate to Henry Lord Cardross, his second son; and David Lord Cardross obtained a charter of *novodamus* 1664 on his own resignation, comprehending *terras ecclesiasticas de Lanark*; together with several kirks mentioned, amongst which Lanark is not named; together with the right of patronage of the kirks and parishes above-mentioned; and he was infest 1668.

No 13.

No 14.

The Exchequer being settled by act of Parliament 1645, with power to expedite new gifts; and having gifted a patronage without warrant from the King; and the rights of private persons being saved by the act rescissory of the acts of this Parliament; the gift was not found good.

No 14.

This right came into the person of Lockhart of Carnwath, who, 13th August 1708, gifted the vacant stipend to the widow and children of Mr John Bannatyne, the late incumbent.

*Pleaded* for the Officers of State, The Earl of Mar did not depend on the charter granted him; the reason whereof has been, that by the act 176th, Parl. 13th, James VI., the grant of patronages of benefices, whereof the incumbent was alive, was void; and that several of the incumbents of the benefices, whereof the patronages were granted, had been alive. He therefore obtained a new charter, 10th April 1615, of the lands and baronies belonging to the abbey of Dryburgh, comprehending the kirk-lands of Lanerk, ordaining that sufficient ministers should be provided to the said kirk, who should be named and presented by the King; accordingly, the King presented in 1616 and 1643, since which time there has been no opportunity of presenting till the death of the last incumbent, whereby the present dispute has been occasioned.

The pursuer has produced no conveyance from the Earl of Mar to his son the Earl of Cardross.

*Observed*, The grant of the patronage to the Earl of Mar has been void, as not being then in the Crown; for it appears by the subsequent charter 1615, that there was then a commendator of the abbey, whose resignation had been after that time obtained.

*Pleaded* for Lee, King Charles I. 8th August 1674, granted the patronages of Lanark and Carlouck to his ancestor; his family has since had no opportunity of presenting to Lanark; the incumbent, at the time of his grant, having held the benefice till he left it at the Revolution, when Mr John Bannatyne, who had a meeting-house in Lanark, took possession of the church without any title, and held it till his death in 1707, and then Mr Orr was called by the heritors and elders; but Lee gifted the vacant stipends to Mr Bannatyne's widow and children, who, on that title, named a factor, and he uplifted the same; nor is it any objection to this act of possession, that Carnwath thought proper, after his gift, to give another to the same parties: Lee also presented to Carlouck in 1731 on the same title, and the presentee was settled.

*Pleaded* for the Officers of State, The charter is a grant of *novodamus*, on a resignation of the family estate; it is dated at Edinburgh, where the King was not at the time; so that it appears there was no warrant for the additional grant of patronage; nor indeed could there be, as the King was then prisoner to the English rebel army.

*Answered*, Lee has a gift under the seals, and ought not to be put to show the warrant thereof after so long time. *2dly*, The Exchequer was then settled by act of Parliament 1st February 1645, with power to expedite new gifts; and though this Parliament is rescinded by act 15th, Parl. 1661, the rights granted to particular persons are saved.

*Observed*, The Parliament gave power to the Exchequer to grant the King's casualties, but not to dispose of the patrimony of the Crown.

THE LORDS found neither of the pursuers had produced sufficient titles to the patronage in question; and that for ought yet seen, the right remained in the Crown.

No 14.

Reporter, *Justice-Clerk.*Act. for Carnwath, *A. Pringle*; for Lee, *R. Craigie.*Alt. *Advocatus.*Clerk, *Kirkpatrick.**D. Falconer, v. 2. No 219. p. 263.*1752. *June 27.*

WILLIAM URQUHART of Meldrum *against* The OFFICERS of STATE and HERITORS of Cromarty.

No 15.

THE kirk of Cromarty was one of the common kirks belonging to the bishop and chapter of Ross; and in 1588, King James VI. granted to Sir William Keith a charter of the barony of Delny, and certain other lands, containing an erection of the kirk of Cromarty, and other eighteen kirks, which had belonged to the said bishop and chapter, into parsonages, and granting to Sir William the teinds and patronage of these kirks, and uniting the whole into one barony; upon which Sir William was infeft. And in June 1592 this grant was ratified in Parliament.

A grant by the King of the patronage of a common kirk in 1588, ratified in Parliament 1592, erecting the same into a parsonage; found to be good without consent of the chapter and bishop, and to subsist notwithstanding the acts 1606 and 1617, restoring bishops and their chapters.

This right came by progress into the person of Sir Robert Innes; who, in 1636, entered into a contract with the bishop of Ross, narrating a process of reduction and improbation which the bishop had against him for setting aside his right to these patronages; and that, willing to prevent further questions, he resigns all these patronages in the King's hands in favours of the bishop, declaring, that the bishop should be at liberty to use that right, or his ancient right, as he thought most proper,

A patronage once united, and passing, by infeftment, along with lands, cannot be afterwards conveyed without infeftment; but a sasine bearing in general "*juris solennitatibus consuetis debite observatis,*" was held sufficient.

On this contract a charter was expeded in favour of the bishop in the same year 1636, and the bishop was infeft 19th September 1637. But the sasine, as appeared from the register (for the principal was lost,) contained no symbol of infeftment, and wanted the sign and subscription manual of the notary.

In July 1656, the said Sir Robert Innes disposed the said lands and patronages in favour of Sir George Mackenzie of Tarbat, afterwards Earl of Cromarty; on which Sir George expeded a charter, and was infeft.

The Earl of Cromarty disposed the estate and patronage of Cromarty in favour of his son Sir Kenneth Mackenzie; and the said estate and patronage being brought to a judicial sale by Sir Kenneth's Creditors, William Urquhart of Meldrum became purchaser.

This last point was affirmed upon appeal.

William Urquhart brought a declarator of his right of patronage, and called as defenders the Officers of State, the Heritors of the parish, and the Presbytery as is usual.