

- No. 3. the Patron presented a bill of advocation, which Lord Kilkerran, Ordinary, reported, whether he should order it to be answered and sist procedure? and the Lords unanimously refused the bill as incompetent. *Vide* 26th June 1751, No. 4. *infra*. (See DICT. No. 10. p. 9909.)
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1751. *June 26.*

MR CHARLES COCHRAN, Patron of Culross, *against* The HERITORS.

No. 4.

IN the above case of Mr Cochran, the Presbytery having disregarded his presentation of Trotter to be second Minister of Culross, and settled Mr Stoddart in November 1748, Mr Cochran pursued the heritors for payment of the vacant stipends; wherein compearance was made for Mr Stoddart;—and though the vacancy had continued two years from November 1746 to November 1748, before he was settled, and though Mr Cochran was not in possession of the patronage, and his right was disputed both by the Crown and by the Town of Culross, and he did not prevail in his declarator of his right till January 1749, three months after Stoddart's settlement;—yet the Lords found the Patron had right to the benefice, and preferred him to the Minister. (See DICT. No. 11. p. 9909.)

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1752 *February 27.*

URQUHART of Meldrum *against* The OFFICERS OF STATE.

No. 5.

THE patronage of the common Kirks belonging to the Chapter of the Bishoprick of Ross found sufficiently constituted and conveyed by the King's charter in 1588, ratified in Parliament in 1592, and that the grant was not annulled by the acts 1606 or 1617 restoring Bishops and their Chapters, nor by the act 1593, unless the competitors would prove that there was an incumbent or Minister serving the cure in the Kirk at the date of that charter; and found also, that though patronages may be created or conveyed without infeftment, yet if they are annexed to Baronies, and thereby made feudal rights and infeftment on them taken, they cannot be transmitted without infeftment in prejudice of singular successors purchasing *bona fide* on the faith of the records. This was in effect found by preferring Urquhart of Meldrum as purchaser of the estate of Sir George M'Kenzie, son of Sir Kenneth M'Kenzie of Cromarty, and particularly of the patronage of the Kirk of Cromarty before the Crown. But a reclaiming

petition was next day presented for the Officers of State, bringing over again all the former arguments, but further informing, that they had now found the sasine proceeding on the disposition of the patronage by Sir Robert Innes, one of Urquhart's authors, and charters upon it by the Crown to the Bishop of Ross in 1637;—which is still depending, and must determine the case in favour of the Crown. But 28th June, an objection being made to the disposition to the Bishop of Ross, we remitted to the Ordinary to hear on that point, and adhered as to the rest. (See DICT. No. 15. p. 9915.)

No. 5.

1753. May 9.

HERITORS and MINISTER of Lanark *against* The CROWN-FACTOR.

No. 6.

IN a case pretty similar to the above, (No. 4.) of the parish of Culross, viz. of the Kirk of Lanark, which became vacant in August 1748, and Lockhart of Lee first presented Mr Dick, and then the Town, and afterwards the Crown presented Mr James Gray, Minister of Rothes; many proceedings were had both in the Church judicatures and Civil Courts. In the first, it made a round twice of Presbytery, Synod, and Assembly, and in the Session both Lockhart of Lee and Lockhart of Carnwath, severally pursued declarators of their right to the patronage, and the Crown defered against both. At last in October 1750, Mr Dick was ordained Minister of Lanark, and 10th July 1751, the Crown was found for ought yet seen, to have the best right to the patronage. Upon which the Court of Exchequer appointed a factor for levying the vacant stipends;—and a multiplepinding being brought in name of the heritors, a competition ensued between the Crown's factor and Mr Dick. And I was of the same opinion as I was in the former case, that Churches ought not to remain vacant for years till contending parties dispute and settle their rights at law, and though Lockhart of Lee appeared to have been pretty backward to get the point of right settled, yet the parish ought not to suffer, and accordingly it carried to prefer Mr Dick; and the President mentioned a case decided in the House of Lords that he said was parallel, touching a presentation by Sir Alexander Cumming of Coulter, 29th July 1752. But the interlocutor was altered 24th November by the narrowest majority possible; the Court, (counting the President) being quite equally divided; and the last interlocutor was again altered, and the first adhered to, 2d March 1753, when the President, Haining, and Leven were absent, (though we had delayed it from before Christmas to get as full a Bench as possible;) and it carried only by the President, (*i. e.* Drummore