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and so, by this means, vacancies may be continued for ever. And as to the cases of Auchtermuchty and Culross, they are, in many respects, different from the present; and consequently the decisions therein given will not apply.

In the reply for the factor, it was *observed*, That Mr Lockhart never had been in the proper possession of this patronage. The King himself had presented the last time it could be done, in the 1643; and the pretence of Mr Lockhart's possession in 1708 is frivolous; for it appears that Lockhart of Carnwath and the town of Lanerk took upon them also to grant assignations of the vacant stipend of that year, under the assumed character of patrons; and such private grants, without the knowledge of the King's Officers, could not be sufficient to dispossess his Majesty of this patronage.

“ THE LORDS preferred Mr Robert Dick, the incumbent, to the stipend that hath fallen due, since his admission to be minister of the parish of Lanerk, and in time coming, during his incumbency; and decerned accordingly.”

Act. *Advocatus & Pringle.*Alt. *Dick, Brown, & Pringle.*Clerk, *Kirkpatrick.*

M.

Fac. Col. No 70. p. 106.

*** This case was appealed :

The House of Lords “ ORDERED, That the interlocutor of 2d March 1753 be reversed.”

1754. *March 8.*HERITORS of the PARISH of TAIN, *against* MARGARET MONRO.

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When the King becomes patron of a church in consequence of the attainder of the former patron, he is not bound to apply the vacant stipend for pious uses within the parish.

THE patronage of the church of Tain fell to the Crown by the attainder of the Earl of Cromarty. The Barons of Exchequer, in right of his Majesty, granted certain vacant stipends of this parish to Margaret Monro widow of the last incumbent:

Some of the heritors having been charged by her for payment of these stipends, presented a bill of suspension, and *pleaded*, That the gift to the charger is an illegal application of the vacant stipends, which, by law, are appropriated for “ pious uses within the parish.” The act 18th, Parl. 1685, indeed declares, that this “ is not to be extended to the vacancies of those churches whereof the King's Majesty is patron;” but this exception relates to patronages then acquired, not to such as might afterwards be acquired by the Crown. In this case, the King has, since the act 1685, come in right of the Earl of Cromarty; and every objection which would have been good against a gift obtained from the former patron, must be good against a gift obtained from the King.

Answered for the charger; The patron had formerly, by common law, the disposal of the vacant stipends. The act 18th Parl. 1685, ordained the vacant

stipends to be applied for pious uses within the parish; but there is an exception in cases where the King is patron; that is, the King was to remain in the condition wherein all patrons were before that act, and have the incontrollable disposal of vacant stipends: This is a personal privilege in favour of the King, and must therefore be extended to patronages acquired since the act 1685, as well as to those which were in the Crown at that time.

“ THE LORDS refused the bill of suspension.”

For the Suspenders, *Lockhart.*

Alt. *Sir David Dalrymple.*

D.

Fol. Dic. v. 4. p. 52. Fac. Col. No 106. p. 158.

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1778. July 12.

LEITH of Whitehaugh *against* Earl of FIFE.

No 37.

AN heritor charged by a patron for vacant stipend, is not allowed to retain or suspend payment, on the allegation that the patron has forfeited his right of administration by his misapplication of former vacant stipends: He must pay in the first place, the law having provided sufficient remedy against the patron's malversation. See APPENDIX.

Fol. Dic. v. 4. p. 52.

SECT. III.

Jus Devolutum.

1682. November.

APPLEGIRTH *against* THOMSON.

THE Archbishop of Glasgow having admitted Mr Thomas Thomson to the church of Applegirth *jure devoluto*, Mr Alexander Jardine of Applegirth patron of the old church, pursued a reduction against the said Archbishop and Mr Thomas, of his admission, upon the ground that the admission granted by the Archbishop was null, seeing the right of presentation did not belong to him *jure devoluto*, in respect Applegirth, who was patron, did present a person to the church within six months after it was vacant conform to the 7th act Parliament 1. James VI. which was sufficient to save his right of patronage, and it was the Bishop's fault that the person he presented was not admitted, seeing he refused to collate him. *Answered*, That it is provided by the act of Parliament, that the patron should present a qualified person within six months after he have knowledge of the vacancy; but so it is, that the person presented by

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The Lords sustained a presentation granted by a bishop as having right to present *jure devoluto*, in respect the patron did not present a qualified person within the six months, the time allowed by the act of Parliament, in which the patron is to perfect all his presentations.