

1776. *August 1.* SIR WILLIAM FORBES, Baronet, *against* The PRESBYTERY of STRATHBOGIE and Mr JOHN DUFF.

PATRONAGE.

*Jus Devolutum.*

[*Fac. Col. VII. 265 ; Dict., App. No. 1, Patronage, No. 2.*]

COVINGTON. The statute, Q. Anne, limits the right of presentation to six months, whatever the ancient law may have done. The right of presentation is as much the property of the patron as his estate is ; and, therefore, all objections against it are *stricti juris*. It is objected,—That the factor had no power to name a particular presentee. Answer,—That would cut off all absentees. It is objected,—That Lady Forbes had no power to present at all. Answer,—She had power to bring all actions of declarator ; and a presentation is of that nature. But, independent of this, the presentation was ratified by Sir William Forbes.

HAILES. It might perhaps have been better for the Presbytery to have asserted its right, and then to have named Sir William's presentee, instead of taking the advantage of an omission on the part of Sir William. The powers of the factor plainly expired as soon as Sir William came of age : his ratihabition would have supplied all defects, and would have been equal to an original mandate, had no interest of third parties intervened ; but as soon as the time elapsed with respect to him, the right accrued to the Presbytery, and I never understood that ratihabition could disappoint the rights acquired by third parties.

KENNET. A man abroad may give a power to present ; but then he must express his intention plainly and timeously.

JUSTICE-CLERK. The Presbytery would have done well to have presented the original presentee ; but I cannot blame the Presbytery for using its rights by choosing the man who was agreeable to the parish. The Act of Q. Anne restored patrons ; but it was *sub modo*, obliging them to present within six months after the vacancy. There has been a fatality here ; but there is no help for fatality. Supposing that the factory had given power, it was no better than a sheet of blank paper when it was laid before the Presbytery, for it had expired. It is impossible that this act of Lady Forbes could be good as a *negotiorum gestio*. You must then go to the ratification. There is no doubt of the principle, *ratihabitione mandato æquiparatur* ; but the principle will not apply here, where a right is acquired to a third party.

PRESIDENT. All things considered, and especially the judgment of the General Assembly, I thought there might have been room for an equitable extension.

On the 1st August 1776, "The Lords repelled the reasons of reduction."  
*Act.* H. Dundas. *Alt.* R. M'Queen. *Reporter*, Justice-Clerk.  
*Diss.* Covington, Gardenston, Auchinleck, President.  
*Non liquet*, Monboddo, who, on account of connexion with the family, voted  
 not.

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1776. *February 22*, and *August 2*. SOPHIA, LADY CRANSTON, *against* GEORGE  
 LEWIS SCOTT and OTHERS.

HUSBAND AND WIFE.

*Donatio inter virum et uxorem.*

[*Faculty Collection*, VII. 289; *Dict.*, *App. I*, *Husband and Wife*, No. I.]

COVINGTON. The benefit of this donation does not go to Lord Cranston or his creditors, but to Lady Cranston's own children; and therefore it is not a revocable donation which she made.

KAIMES. By this transaction, the creditors of Lord Cranston are not much benefited; but his children are great gainers, and his wife loses nothing. Such a transaction cannot be called a *donatio inter virum et uxorem*.

GARDENSTON. This deed, holding it to be completed, cannot be revoked, for it is a contract with creditors.

On the 22d February 1776, "The Lords found the contract binding;" adhering to Lord Auchinleck's interlocutor.

*Act.* J. M'Laurin. *Alt.* R. M'Queen.

Reported by Mr David Ross of Ankerville, Lord Probationer.

*August 6.*—KAIMES. In mutual contracts, the consent of both parties is required, and till both consent, neither is bound: but it is not promise alone which binds parties; there may be an offer, as in this case, sufficient to constitute an obligation. "I will do *this*, if you will do *that*. I am bound, but not for ever." The offer must be accepted of *debito tempore*: as there were many creditors, matters could not be instantly adjusted. Lady Cranston put her deed on record, and the creditors have accepted so early that the lady can suffer no loss.

COVINGTON. I am sorry that my opinion does not coincide with what I consider to be a beneficial transaction for the family. My doubt lies here: I cannot hold this to be a conditional obligation. There was never any complete agreement. It was incumbent on the creditors to have qualified their claims in the ranking according to the proposed restriction. Instead of this, some of the creditors wavered, and were uncertain whether to consent or not. Lady