with deduction of the rent corresponding to each acre, according to the tack;" which they modified to twenty shillings per acre.

Act. Ilay Campbell. *Alt.* G. Wallace.

Reporter, Mr David Dalrymple of Westhall, Lord Probationer.

1777. *July* 29. EARL of MORAY *against* MISS ANNE BRODIE of LETHEM.

PATRONAGE.

Alternate Right to present.

[*Fac. Coll. VII.* 442; *Dict.* 9937.]

HAILES. When a parish is made up of parts taken from two old parishes, the patrons of the old parishes will be presumed to have a vice-patronage in the new one. That the quantity taken from the one parish happens to be a little larger than what is taken from the other will make no difference; for indeed it is scarcely possible that the parts should ever be exactly equal, yet possession may make a difference, and establish another rule. Here there is pleaded for Lord Moray a possession of 150 years; but when that possession comes to be canvassed, it appears that he has had no more possession than if he had had only a vice-presentation. The first opportunity of presenting occurred in 1665, and Lord Moray presented; the *second* in 1670, and the Bishop, not Lord Moray, presented, probably because Lethem, a violent republican, did not choose to interfere in the settlement of an episcopal minister; the *third* in 1752, when Lord Moray presented, as was his turn at any rate, and *this* under a protest taken by Lethem: and thus his possession proves to be just what Miss Brodie's argument admits.

BRAXFIELD. Where a new parish is composed of two old ones, having different patrons, the rule is, that the patrons of the former parishes shall have the alternate patronage. A considerable part was taken from Rafford, where Lethem had a right: possibly, if only an inconsiderable part had been taken off, there might have been a difference. The question is, Whether is Lethem's right cut off by the negative prescription, while Lord Moray's is established by the positive? For this, two things are requisite,—a title and possession. Neither of them is here. I cannot presume, without evidence, that a person without a title as sole patron, did present as sole patron. It is plain that Lord Moray did not present in 1670. Lord Hailes has offered a plausible conjecture why Lethem did not present in 1752. When Lord Moray presented, Lethem protested. Neither was there any title in Lord Moray. A right to the patronage of Alves will not give right to the patronage of Kinlos, a parish partly made up out of Rafford. The case of *Hutton* and *Fishwick* does not apply, for *there* the Crown had a good title *jure coronæ*, as presumptive patron to all the churches in Scotland. If the Crown should present for more than 40 years to all the churches in Scotland, it would be universal patron.

PRESIDENT. If Lord Moray had presented in 1670, I should have thought his titles sufficient, with constant possession, to have established his right to the patronage of Kinlos.

JUSTICE-CLERK. I think that Lord Moray's title would have been sufficient, had his possession been uniform.

GARDENSTON. Lord Moray had a good prescriptive title: by the annexation, his title extended to the whole parish, *pro indiviso* indeed, but still there was a subject for prescription, just as in the case of a commonty.

ALVA. When there was originally an alternative right, we are not to presume that the presentation 1670 was by the Earl of Moray, which we might have done, had there been no other person who could claim.

On the 29th July 1777, "The Lords preferred Miss Brodie for this *vice*."

Act. Ilay Campbell. *Alt.* D. Rae.

Reporter, President for Lord Kennet.

1777. *July* 29. LIEUTENANT JAMES ENGLAND *against* NICOL SHAW and OTHERS.

CESSIO BONORUM.

Found that an officer applying for the benefit of the *cessio*, must assign his half-pay to his creditors.

THE question in this case was, Whether Lieutenant England, the pursuer of a *cessio bonorum*, should make over his half-pay to his creditors? Besides other authorities, the pursuer referred to the cases of *Grierson* against *Campbell, 5th March* 1768; *Fairies*, 1774; *Ferguson*, 1776. The defenders referred to Voet, *lib.* 42, *tit.* 3; Statutes of William the Lion, cap. 17; Stair, 4. 52. 30; Bank, 4. 40. 1; Ersk. 4. 5. 26.

The following opinions were delivered:—

MONBODDO. I am not apt to give much weight to a single decision; but *here* there are three consecutive decisions. Independent of them, I should think that the half-pay of a lieutenant in the army cannot be assigned. I think that the party himself has a right to plead this, because he has an interest: half-pay is not only a remuneration, it is also of the nature of a retaining fee. The half-pay list is a fund for veteran officers. An officer must live like a gentleman, and L.38 *per annum*, which is the extent of his half-pay, is surely a small sum for that purpose. An aliment is here given from year to year: it is like servant's wages, and a *beneficium competentiæ* ought to be allowed.

HAILES. There is no doubt that there are three consecutive decisions, finding that an officer seeking the benefit of a *cessio bonorum* is not obliged to assign his half-pay: but, although there are three decisions, the only one where