

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.

No 36.

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

No 38.

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.

No 38.

the pursuer, was not sufficiently qualified, the Bishop, after his presentation, having remitted his trial to the presbytery, it was found he was given to drink and found unfit for the ministry, so that the pursuer not having presented another qualified person within the six months, the Bishop had right to present *jure devoluto*. *Replied*, That the pursuer was *in bona fide* to think that the person presented by him was qualified, seeing he was licenced to preach by the same Archbishop, and the pursuer was not obliged to present another within the six months, unless it had been intimated to him that the person presented was not sufficiently qualified; and if it were otherwise, laick patrons might be easily prejudged of their right of presentation, if the Bishop did not intimate to him that the party presented was rejected as not sufficient, to the effect he might present another. *Duplied*, That the Bishop was not obliged to make any intimation that the party presented was not qualified; but it is sufficient to give the Bishop the right of presentation *jure devoluto*, that the patron did not present a qualified person within the six months conform to the act of Parliament; and if it were otherwise, it would be in the patron's power always to keep the church vacant, for he might always present insufficient persons, and as one were refused he might present another, which if it should run other six months, and so from six months to six months, the church, by that means, should never be supplied; and therefore the patron ought to present timeously, that if the person presented should be rejected as insufficient, he might present another qualified person before the six months expire. THE LORDS sustained the presentation granted by the Bishop, as having right to present *jure devoluto*, in regard the pursuer did not present a qualified person within the six months, which the LORDS found was the time allowed by the act of Parliament, in which the patron is to perfect all his presentations; so that if the person presented by him within the six months be not qualified, the right of presentation for that time belongs to the Bishop *jure devoluto*.

Fol. Dic. v. 2. p. 47. Sir Pat. Home, MS. v. 1. No 268.

* * * Harcarse mentions this case :

1682. *December*.—A PATRON having presented within six months a minister, who was habite and repute sufficient for literature, but who, after six months, was refused by the Bishop, upon information of some scandal, whereof the patron was ignorant; he, the patron, upon the Bishop's refusal, claimed the privilege to present another after the six months.

Alleged for the Bishop; That the patron's power of presenting was confined to six months, after which there was a *jus devolutum*. And the act 7th, Parl. 1. James VI. which states the case of patrons presenting twice, confines both to six months.

Answered for the patron; By the act of Parliament, the Bishop has the *jus devolutum*, if the patron neglect to present within the six months; but so

it is, the patron here did present *debito tempore*, and could not present another, until the Bishop had rejected the former; so that what part of the six months was lost by the Bishop's delay, cannot be imputed to the prejudice of the patron.

THE LORDS ordained the point to be debated *in presentia*.

Harcarse, (PATRONAGE.) No 649. p. 211.

No 38.

1696. December 8.

PRESBYTERY OF FALKIRK *against* The Earl of CALLANDER and His TUTORS.

PHILIPHAUGH reported the Presbytery of Falkirk against the Earl of Callander and his Tutors, for declaring that he had lost the vice of presentation of the minister of Falkirk, (whereof he was patron,) both during this vacancy and the next, because he had neither qualified himself, nor applied it to a pious use within the parish. *Alleged*, That being the delinquency of the last Earl, it cannot prejudice his heir; because *in pœnalibus non datur actio in hæredem ex defuncti delicto*. *Answered*, The certification against misapplication of the stipend is not such a penalty as is intransmissible to the heir, but is rather *jus accrescendi* to the moderator of the presbytery, and a devolution; and if the last Earl had no right, he could not give his heir the same, and the tinsel was declared against the last Earl of Callander in his own time. THE LORDS declared against the heir in favour of the presbytery.

Fol. Dic. v. 2. p. 47. Fountainball, v. I. p. 740.

No 39.

1762. March 2.

THE PROCURATOR for the Church of Scotland, and the MODERATOR for the Presbytery of Ayr *against* THOMAS EARL OF DUNDONALD.

THE patronages of the parishes of Monkland and Prestick, within the bounds of the presbytery of Air, belonged of old to the abbacy of Paisley, and were purchased by the family of Dundonald from the Lord of erection of that abbacy.

These two parishes were afterwards united.

In 1662, the then Lord Cochran conveyed the patronage of Monkland to Blair of Adaintoun, in whose family it still remains.

In 1726, Thomas then Earl of Dundonald made a strict entail of his estate, including the patronage of Prestick; but this, notwithstanding, William the immediate predecessor of the present Earl, conveyed the patronage, for favour and affection, to Charles Dalrymple of Orangefield.

Mr William Walker, the last incumbent in these united parishes, having

No 40.

A patron having given a presentation, the person presented signified his acceptance by letter, but when he came to be settled, he declared his renunciation of the presentation, as he had since his acceptance got another. The