

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

- No. 6. when in the chair) his casting vote, Murkle being *non liquet*. But it was reversed in Parliament and the Crown's factor preferred.

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1753. July 27. URQUHART of Meldrum *against* OFFICERS OF STATE.

No. 7.

UPON the remit in the case of Urquhart of Meldrum against the Officers of State, (No. 5.) he objected to the contract on which the charter in 1637 proceeded, and which was signed by Sir Robert Innes in 1634, but by the King and Bishop in 1637, that the witnesses to Sir Robert's subscription were not designed; *2do*, That the precept of sasine proceeding on the charter was not produced; *3tio*, That the sasine did not specify the symbols; *4to*, That the extract did not bear the notary's mark or note, without which the principal sasine would have been null; *5to*, That Meldrum purchased the patronage at the judicial sale of Sir Robert M'Kenzie's estate. Answered, No statute before 1681 requires the designation of witnesses, and it would be unjust to void so solemn a contract whereon possession followed on that account; *2do*, That patronage may be conveyed without infestment, especially after it was dissolved from Sir Robert Innes's Barony by the charter; *3tio*, The sasine bears, *omnibus juris solemnitatibus in similibus fieri consuetis*, and precedents were quoted from Durie, where sasines were sustained without specifying the symbols; *4to*, None of the records of those times contain the notary's note, and the docquet bears expressly that he had put his mark to it, "*Signavi*;" To the *5th*, That the act 1695 secures purchasers at sales only against the debts and deeds of the bankrupt and his predecessors; and, as to the precept of sasine, that by the act 1594 they are not now after so long a time obliged to produce it. The Lords found, that the Crown's right is not barred by the act 1695; that Sir Robert Innes was not denuded till the Bishop was infest; but repelled the objection, that the precept of sasine was not produced, and also repelled both the objections to the sasine: but (as in the case, 22d November 1742, Duke of Douglas against the Creditors of Littlegill so here) we sustained the objection to the contract, that the witnesses to Sir Robert Innes's subscription were not designed; but found that the defect might be supplied by condescending on the witnesses and astructing the same, (See WRIT,)—but the interlocutor stopped on a reclaiming bill for the Officers of State. (See DICT. No. 15. p. 9919.)

See STIPEND—TIENDS.

See NOTES.