

No 15. holding, and the bishop having taken right to this patronage by resignation, behoved to submit to the rules of the feudal law, and could have no complete right without infeftment.

“ THE LORDS preferred Urquhart of Meldrum before the Crown.”

Sel. Dec. No 6. p. 8. and No 7. p. 10.

1755. *January 8.* DONALDSON of Kinnairdie *against* OFFICERS OF STATE.

No 16.
Patronage
not compre-
hended under
any of the an-
nexing acts.

THE abbacy of Aberbrothock, to which belonged the patronage of the kirk of Aberarder, was erected by King James VI. in a temporal lordship in favour of the Marquis of Hamilton; and upon his resignation, was by Charles I. disposed to William Murray, afterwards Earl of Dysart, from whom Kinnairdie derived right. His right being controverted, he insisted in a declarator of the same against the Officers of the Crown. For them it was *objected*, That the abbacy of Aberbrothock having been comprehended under the general act of annexation 1587, the grant thereof by the King in favour of the Marquis of Hamilton, and the subsequent grant in favour of William Murray, were null and void. It was *answered*, That patronages were not comprehended under any acts of annexation; and, therefore, the objection is not good.

‘ THE LORDS, I think, unanimously preferred Kinnairdie to the patronage.’

The history of the patronage of the church after the Reformation, appears to be this. The bulk of the subjects belonging to the church, teinds as well as lands, being under patronage; and the use for which these subjects were given to the church, having ceased upon the Reformation; it was thought that these subjects ought to return to the respective patrons, as being the presumed donors. All the subjects of which the King was patron were upon this principle restored to him; and all that were of church patronage went to him as *bona vacantia*. Laick patrons at the same time took possession of the subjects under their patronage. All this happened long before the act of annexation 1587, which is evident from the act itself, excepting from the general annexation many lands belonging to monasteries, formerly gifted by the Crown, and erected in temporal lordships. And with regard to patronages in particular, all of them, in the act 102d, Parl. 1581, are understood to be either in the Crown or in the laick patron; which shows, that even before the 1587, such patronages were transferred to the Crown.

We are not then to consider the act 1587 as the title which the Crown has to church lands, and other branches of its patrimony. The sole intention of this act was to annex to the Crown certain subjects which formerly belonged to the King. No subject is conferred upon the King by that statute save bishop lands. These are not only taken from the bishops and bestowed upon the King, but also annexed to the Crown. Church patronages were certainly in

the Crown long before the statute, and as these are not annexed, the King is under no limitation, but may dispose of them at his pleasure.

No 16.

N. B. With regard to common kirks, such as M'Kenzie observes upon the act 199th, Parl. 1594, were not patronate, but like mensal churches were, from time to time, served by persons appointed; the King, after the abolition of popery, came, from the nature of the thing, to be also patron of these. And accordingly, by the statute now mentioned, these are appointed, like other benefices of cure, to be provided by presentation of the lawful patron.

Foh. Dic. v. 4. p. 53. Sel. Dec. No 72. p. 96.

1758. *January 17.*

GRAHAM of Balgowan *against* The OFFICERS OF STATE.

THE patronage of the parish and kirk of Monydie was part of the estate of the family of Gowrie.

Upon the forfeiture of the Earl of Gowrie for treason, his estate was annexed to the Crown, by act of Parliament 1600, cap. 2. ; and by this act, 'all and sundry the lands, lordships, baronies, benefices, and others particularly above mentioned, annexed to his Highness's Crown, are united to the lordship of Ruthven, then and in all time coming, to be called the lordship and stewardry of Huntingtower.'

No 17.

Patronage, whether understood to be dissolved from the annexed property, along with the lands to which it was accessory?

In the year 1606, an act of dissolution was passed, whereby were dissolved from the foresaid annexation 'the hail lands pertaining or belonging to the said earldom of Gowrie and lordship of Ruthven, and in special the lands and lordship of Huntingtower, and the lands of Strathbran, that the same might be let in feu-farm, and heritably disposed, for payment of the old duty, with augmentation of the rental.'

By charter and infeftment 1607, referring to the above acts of annexation and dissolution, King James VI. granted in favour of James Graham of Balgowan, a feu of the lands of Nether-Pitcairn, and sundry others, particularly mentioned, 'una cum advocacione, donatione, et jure patronatus ecclesie parochialis de Monydie, rectorie et vicarie ejusdem, cum omnibus et singulis censibus, decimis, &c.'—And a merk Scots is added in augmentation of the rental.

The acts of possession that have been had of this patronage by the family of Balgowan since the time aforesaid appear to have been as follow; *imo*, A presentation dated the 15th December 1662, granted by Balgowan, bearing, That Mr David Drummond, then minister at Monydie, did succeed to that parish as parson and vicar, after the decease of the last incumbent; and that the said Mr David being established there according to the law of the land for the time; and seeing patronages were revived by a late act of Parliament, giving power to all patrons to present ministers that have entered to their kirks since the