

No 94. place only in the Exchequer. The grounds of decision, in other respects, were specified in the judgment, which was in the following terms :

“ Having considered the condescence preferred on the part of the defenders, with respect to the election of a Provost, article first of the report, in respect of the practice specified in the said condescence, and not controverted by the pursuers, assoilzie the defenders from that conclusion of the libel ; and having also considered the mutual memorials of parties with respect to the sinking fund, and with respect to the general exhibition of the town's books and accounts demanded by the pursuers, find the several conclusions referred to in these two articles not competent before this Court, and assoilzie the defenders therefrom, and likewise from the hail conclusions of the libel.”

The pursuers thereafter gave in a petition for expenses ; which having been remitted to the Lord Ordinary, were found due ; and a petition against that finding, after being answered, refused.

Lord Ordinary, *Justice Clerk.* For Gilchrist, &c. *Macqueen, Crosbie.*  
 Clerk, *Campbell.* For the Provost, Magistrates, &c. *A. Lockhart, Sol. H. Dundas.*  
*R. H.* *Fol. Dic. v. 3. p. 341. Fac. Col. No 86. p. 251.*

1772. June 16.

Mr JOHN SNODGRASS, Preacher of the Gospel, GEORGE STEEL, JOHN BEATSON,  
 and Others, *against* Mr JOHN LOGAN and Others.

No 95.  
 Where the patronage of a kirk is lodged in a collective body, which having differed in choice, divides into two parties, and each party gives a separate presentation, the Court is competent to decide which shall be preferred.

By decree of the Court of Session, pronounced 3d August 1759, it was found, That his Majesty has no right to the patronage in question ; and found, in respect it is agreed that the pursuers, (the Incorporations of South Leith, being the shipmasters, maltmen, trades, and traffickers), and the kirk session of Leith, have been immemorially in the use to concur in presenting the second minister of Leith ; that thereby these two bodies have secured to themselves the right of patronage of the said benefice, jointly, and that they fall to exerce that right jointly in time coming ; and found that, in time coming, the said right shall be exerce as follows, viz. the two Magistrates of Leith for the time being, shall each, *ex officio*, have a voice, and that the judge-admiral of the town of Leith, appointed by the Council of the city of Edinburgh for the time, shall also have a vote, and that each of the four incorporations, the pursuers, shall chuse four delegates, making in all sixteen, for representing the incorporations, and that the kirk session shall chuse fifteen delegates, who, with the colleague minister, who is to have a vote *ex officio*, shall represent the session ; and found, that the right of presenting shall be vested in the said thirty-five persons, or major part of them, at a meeting to be held for that purpose, the time and place of their meeting to be publicly intimated.

‘ from the pulpit, or from the reader’s desk, three weeks before the meeting at least, on a Sabbath, when the congregation is assembled, and before it is dismissed.’

No 95.

Upon occasion of a vacancy of the charge of second minister of South Leith, Mr Snodgrass and Mr Logan were set up as candidates; and the constituent members of the collective body, in whom the patronage vested, having split into two parties, the delegates from the kirk session, and the delegates from the shipmasters, chosen at a meeting on the 6th of August 1771, voted for Mr Snodgrass. The delegates from the maltmen, the trades, and the traffickers, and another set of delegates from the shipmasters, chosen the 27th August, the admiral-bailie, the two resident bailies, and the first minister, voted for Mr Logan; and these several parties signed different presentations to the respective candidates for whom they voted.

Mr Snodgrass, and the voters on his side, brought a process of reduction and declarator against Mr Logan, and his adherents, before this Court. Mr Logan and his party repeated a counter-process of a similar nature.

It occurred to some of the Judges, that there was a preliminary question, viz. touching the competency of this Court to try the merits, in respect that here there was but one patron, and the question is only with regard to the mode of presenting; but it carried that the Court had jurisdiction, for that it resolved into a point of civil right, which of the two presentees was legally elected? and, after a long litigation, the final interlocutor of the Court (18th November 1772), was as follows:

“ Repel the reasons of reduction of the presentation in favours of Mr John Logan, and assoilzie him and others from the conclusions of reduction and declarator at the instance of Mr John Snodgrass and others, and decern; sustain the reasons of reduction of the presentation to Mr John Snodgrass, reduce, decern, and declare accordingly.”

*Act. M<sup>e</sup> Queen et M<sup>e</sup> Laurin. Alt. D. Dalrymple et Solicitor Dundas. Clerk, Ross.*

*Fol. Dic. v. 3. p. 343. Fac. Col. No 14. p. 35.*

N. B. The above recited judgment on the merits proceeded on circumstances; chiefly on the irregularity of the meeting of shipmasters, 6th August, and of the proceedings therein.—See PATRONAGE.

1775. February 17. JAMES COUTTS against SIR FRANCIS BLAKE.

MR COUTTS, in virtue of his infeftment in the estate of Greenside, locally situated in Scotland, has a right to a fishing in the river Tweed, thus described in his rights: ‘ All and whole that fishing upon the river Tweed, commonly called the *Fishing of Upsattlington*, betwixt the west ford of Norham and the ford called Bendibus, beside Newbigging, with the pertinents, lying in the

No 96.

An action of trespass instituted by a Scots heritor against an English one, for his having de-