

son: even as the undetermined obligation of giving charity can compel none to give it.

The Lords thought this case of a *terce*, and the Act 1695, was new, and deserved to be heard in their own presence.

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1700. *January 11.* SIR THOMAS KILPATRICK of CLOSEBURN *against* The OFFICERS of STATE.

SIR Thomas Kilpatrick of Closeburn pursues the Officers of State, on this ground, That the church of Closeburn anciently belonged to the abbacy of Kelso, and that of Dalgarno to Holyroodhouse. They being suppressed after the Reformation, there was a charter granted by King James VI. in 1594, to Closeburn's predecessors, disposing the patronage of these churches in his favours; and since that time they have been in use of presentation; only the Bishops of Edinburgh and Galloway, in the late Episcopacy, controverted his right: and now his Majesty's Officers of State, on the abdication of bishops, claim the disposal of the vacant stipends as come in their place, Therefore Sir Thomas raises a declarator of his undoubted right to the patronage; and that though patronages be now taken away, yet that he has the sole right and disposal of the vacant stipends, to pious uses within the parish, conform to the late Act of Parliament.

ALLEGED for the King, *1mo.* Thir churches, on the suppression of monasteries, were annexed and incorporated into the bishoprics of Edinburgh and Galloway; and are of their mensal and patrimonial churches; and they have been in use to set tacks of the teinds of the same. *2do.* The very charter in 1594 reserves the abbots' right. *3tio.* By the general Act of Annexation 1587, patronages of kirklands being annexed, these could not be validly disposed to Closeburn, unless a dissolution had preceded.

ANSWERED,—Any rights the bishops can show are long posterior to his church; and the see of Edinburgh was not erected till 1633; and any pretence they could have to the teind was only to the superplus more than paid the minister's stipend. And, as to the *second*, The reservation in the charter was allenary of the abbots' liferent then in being, but mentions not their successors. And as to the Act of Annexation, it does not mention church-patronages; and many hundreds were disposed after that Act; which, if quarrelled, would endanger the most of the patronages now dispersed in the hands of the nobility and gentry of the nation.

The Lords declared in favours of Closeburn, and preferred him, as having the better right.

In this cause it was started, If the Justice-Clerk, being an Officer of State, ought to have a vote in actions where the King was a party; though they could neither lose nor win in the cause.

The Lords forbore to determine this declinator, seeing it was not given in by the party.

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