

No 2.

4to, THE LORDS, by a plurality, found Reidy's gift not null on that head, that it gave him the presentation of offices before they were vacant; seeing *beneficium non vacans nequit conferri*; for the LORDS thought a right of patronage and presentation of a minister might lie under the same exception; 5to, They found Reidy's gift not null on the 69th act 1587, that the giving away the King's privileges or casualties in bulk is expressly prohibited; for they thought, the King might lawfully annex the presentation of the macers to the judicatory of the Session for ever; and if so, why not to one man, which, though inconvenient, yet showed the alienation of it from the crown was not unlawful? 6to, It was stated whether Reidy's gift was null upon the 44th act 1455, discharging any offices to be given out in fee and heritage, in any time coming. This was found to be the tenderest point of all; for on the one hand, to find that act of Parliament in desuetude, was to encourage Kings and their Ministers of State to give away and dilapidate all offices, and turn them to be heritable to families or lands: On the other side, to sustain that act as *in viridi observantia* was to alarm the nation, and unhinge all their securities of the heritable offices, which many of them enjoyed. Some were for making a distinction between these that were clad with possession, and this which was only *in adipiscenda possessione*; yet this was still dangerous, for Queensberry, Duke of Gordon, and many others, that had got heritable rights of regalities, which either were not confirmed in Parliament, or were not yet roborate with 40 years possession since their date; and even the old ones might be quarrelled, and the prescription alleged to be interrupted by the edictal citations, the King's revocations, minority, absence when banished, and many other pretences; therefore, to shun all those dangers, the LORDS fell upon this expedient, that this nullity was not receivable by way of exception against Reidy's gift, but only in a reduction, when the King's Advocate, authorized by his Majesty's warrant, insisted in the same; whereupon Reidy's gift was preferred; and John Adam componed with William Innes, who was formerly presented, and having paid 2200 merks to Reidy, he was admitted macer.

*Fol. Dic. v. 1. p. 235. Fountainball, v. 1. p. 543. & 553.*

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1731. June 25. LORD DUN against TOWN of MONTROSE.

No 3.

IN a declarator of a right of constabulary, at the instance of Erskine of Dun against the Town of Montrose, it was *objected*, That the said right of constabulary was null by the 44th act, Parliament 1455, declaring, that no office in time to come should be given in fee and heritage.—It was *answered*, The act was gone into desuetude, which the LORDS found. See APPENDIX.

*Fol. Dic. v. 1. p. 235.*