

No 16.

But, upon a reclaiming petition and answers,

THE LORDS “ sustained the defence, and assoilzied from the declarator ; preferred the defenders to the right of administration of the rents of the lands purchased for a stipend to the minister during a vacancy ; and decerned.”

Reporter, *Lord Minto.*Act. *Advocatus.*Alt. *M^e Queen.**J. M.**Fol. Dic. v. 4. p. 50. Fac. Col. No 83. p. 181.*

*** This case was appealed.

THE HOUSE OF LORDS ORDERED, that the judgment of the Court of Session should be reversed.

1765. *February 13.*WALTER LORD TORPHICHEN *against* MR GILLON of Walhouse.

No 20.

A patron, upon the building of a new church, has a preference in the choice of his seat, though his interest in the parish be trifling, and the other heritors pay in proportion to their valuations.

THE old church of Torphichen having been taken down, and a new one erected, the area of the church, of course, came to be the subject of division. His Lordship was undoubted patron and titular of the teinds in the parish, in virtue of grants from the Crown to his family, whereby he and his ancestors were vested; as coming in the place of the preceptor, with the property of the lordship and barony of Torphichen, and all the privileges thereto belonging. He was also superior of a considerable part of the parish, of the most part of which he was formerly the proprietor, though his property at present therein was but trifling. When the heritors convened, his Lordship insisted, that he, on account of his pretensions, as above stated, was well entitled to the first choice of a seat; and, *2dly*, That he had right to a seat of the same dimensions with the one that had been possessed by his family, from time immemorial, in the old church in Torphichen. Mr Gillon, on the other hand, and the rest of the heritors, were of opinion, that, as the new church was built by the heritors in proportion to their respective valuations, the extent of their valuations must determine the preference of choice, and likewise the *quantum* which fell to be allotted for the accommodation of each heritor; and that, as Mr Gillon succeeded to the Earl of Hopeton, who formerly had the highest valuation, he was therefore entitled to the same preference Lord Hopeton would have had, if he had not disposed his right to him. The bone of contention between the parties was, which of them should have possession of the only aisle in the new church, opposite to the pulpit, as being not only the most respectable situation, but likewise best calculated for having a full view of, and being well viewed by, the congregation.

“ THE COURT, in respect that Lord Torphichen was patron of the parish, titular of teinds, and an heritor in the same, found him entitled to the first

choice of a seat in the church, and likewise of the dimensions claimed by him."

No 20.

A. C.

Fol. Dic. v. 4. p. 54. Fac. Col. No 7. p. 13.

1772. June 16.

SNODGRASS, &c. *against* LOGAN.

No 21.

WHERE the patronage of a kirk is lodged in a collective body, which having differed in choice, splits into two parties, and each party gives a separate presentation, the Court of Session is competent to decide which shall be preferred.

*Fol. Dic. v. 4. p. 51. Fac. Col.** * * This case is No 95. p. 7374., *voce* JURISDICTION.1777 July. BRODIE of Lethem *against* EARL of MORAY.

THE parish of Kinloss had been erected in 1661, out of parts of the two adjoining parishes of Alves and Rafford, whereof the patronage of the former belonged to the Earl of Moray, and that of the latter to Brodie of Lethem and Lord Spynie alternately. Mutual declarators were brought by the Earl and Miss Brodie of Lethem, to ascertain the right of patronage on a vacancy in 1777; and the Duke of Gordon, in right of Lord Spynie, sisted himself in the process. *Urged* for Miss Brodie, That she was unquestionably entitled to an alternate right to presentation, agreeably to act 1621, c. 5. and 1617, c. 3.; and the Earl of Moray having confessedly presented the last minister, it was now her turn. *Contended* for the Earl; That supposing Miss Brodie to have had the sole right to the patronage of Rafford, instead of only an alternate right with Lord Spynie, she could not now claim a title to any part of the patronage; for two thirds of the stipend is paid out of lands in the old parish of Alves, where the church itself is situated. At any rate, the Earl's right is established by the positive prescription, and that of Miss Brodie cut off by the negative. The first minister was settled by popular call in 1657, while patronage stood abolished; the second was presented by the Earl of Moray in 1665; the third in 1670, in virtue of a letter from the Bishop of Moray, which it may be presumed, was in consequence of a presentation from the Earl; the fourth was settled while patronage again stood abolished by law; and the last incumbent was presented in 1750 by the Earl of Moray, although Brodie of Lethem, now for the first time, protested, that his right should not thereby be prejudiced. *Answered* for Miss Brodie, That the only act of presentation by the Earl of Moray, except the last, was that in 1665; the next, in 1670, there was equal reason to presume had been in consequence of Lethem's presentation as that of

No 22.

Alternate right to present.