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March 1791, (Bell's Cases, 93), Lord Justice Clerk Macqueen explains this doctrine, and the effect due to the Lord Chancellor's certificate, in these terms :—" The Chancellor's certificate is as effectual a discharge as payment is with respect to all debts due by an Englishman living in England. The creditor cannot attach a debtor who has such a certificate in England ; must not we also protect him ? I have a *res judicata* in England, freeing me from a demand ; I come to Scotland, can I be taken up there on an action upon the same ground ? No." A *res judicata* is good all the world over ; the courts have no right to review this final judgment. On the other hand, if I want execution on an English decree, the other party cannot defend himself against it, otherwise than by shewing that the decree is unjust by the law of England. If the decree be liable to review, it must be reviewed in England ; if there be a judgment in the last resort, it can go no further. A man cannot be forced to go through every country in Europe with his defence."— There is a short notice of this case, M. 4579.

HIS MAJESTY'S ADVOCATE - - - *Appellant ;*
ARCHIBALD DOUGLAS of Douglas - - *Respondent.*

House of Lords, *4th March* 1765.

PATRONAGE—RIGHT OF PRESENTATION.—Circumstances in which held that the Crown was divested of the right of patronage, although in the orginal titles in favour of the party the words of the grant were general and not special, and although the exercise or possession of the right was not always enjoyed by him, but sometimes by the Crown, as coming in place of the Bishop.

THE united parish of Buncle and Preston became vacant in 1761 ; and a question arose between the respondent and the crown, as to which of them had the right of patronage, and of presenting the minister to the vacant benefice. The respondent brought an action of declarator against the Officers of State, to have it found that he had right, in virtue of a charter granted in 1547, by Queen Mary, to his ancestor Archibald Earl of Angus, which was ratified in parliament in 1567, and granted to him and his heirs therein named, the several lordships and baronies therein mentioned, and *inter alia* " Terras Dominium et Baroniam de Buncle et Pres-
" ton, cum omnibus et singulis annexis, connexis, partibus,
" pendiculis, tenen. tenan. libere teneu. servitiis, molendinis,
" multuris, silvis, piscariis, *Advocatione et Donatione Eccle-*

" *siarum beneficiorum* et capellaniarum earundem et suis " pertinen. jacen. infra vicecomitatum nostrum de Berwick," &c.

The Earl of Angus was forfeited in 1581, and during the interval between this and his restoration, the crown, as in his right, exercised the right of patronage.

In 1602, having been sometime previously restored by King James, his Majesty granted a new charter to the then Earl of Angus, of the barony of Buncle and Preston, with the right of patronage of the churches thereof. This was renewed in 1698 to James Marquis of Douglas; and in 1707 Queen Anne, by charter in favour of Archibald Duke of Douglas, granted to him the lordships of Buncle and Preston, " una cum advocatione, donatione et jure patronatus " ecclesiarum beneficiorum, capellaniarum aliisque pertinen. " quibuscunque dict. terrarum dominii de Buncle et Preston."

In virtue of this title, the family of Douglas had always exercised the right of patronage, with certain exceptions; these exceptions arising from being deprived of exercising the right by the political changes of the period. In 1582, the crown had exercised it after the earl's forfeiture. In 1665, being restored, the Marquis of Douglas presented on the next vacancy. In 1678, the Bishop of Dunkeld wrote a letter to the presbytery of Dunse, recommending a person on the next vacancy. The next vacancy, in 1696, was by a call from the heritors, the right of patronage having, in the meantime, been taken away by act 1690; and so also was the next vacancy in 1706. When patronage was restored, the right returned, as the respondent alleged, to his family.

On the other hand, the appellant claimed the right of patronage in question, to belong to the crown, as coming in place of the Bishop of Dunkeld, to whose see it was attached, as one of his mensal churches, which were churches inseparably joined to the bishopric, for the better support of the Bishop, and to which the Bishop, before the Reformation, had the appointment of the vicar, for the performance of the cure, to whom he allotted a yearly income, or stipend, out of the living. The bishop, for these purposes, had the whole right to the tithes of the parish, and, as a part of this right, the presentation accompanied or adhered thereto. When, after the Reformation, this system of church government was destroyed, the crown came in place of the bishop, and was now entitled to exercise the rights which he then exercised, in presenting ministers to the vacant benefice.

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HIS MAJESTY'S ADVOCATE v. DOUGLAS.

In virtue of this right, the crown had exercised the right of presenting on several occasions, while the respondent could only stipulate one instance in 1665, in which his ancestors have exercised that right; the appellant therefore pleaded, that, supposing the right of the crown, as coming in place of the bishop, were doubtful, yet as the respondent claimed simply as the grantee of the crown, it was incumbent on him to shew that the crown had been divested in his favour in more express words than his titles set forth, and also that possession had followed on such grants. All that he shews is a title in very general terms, and only a doubtful possession.

Feb. 23, 1763. The Lords pronounced this interlocutor: "Found that the "pursuer, Archibald Douglas of Douglas, has the sole right "and title to the patronage of Buncle and Preston, and "therefore repelled the defences offered for the crown, and "decerned and declared accordingly."

Against this interlocutor the present appeal was brought.

Pleaded for the Appellant.—By the law of Scotland, the crown cannot be divested of an anterior right of patronage by general words. In order to this, the conveyance must be precise and express. Possession is also necessary, in order to preserve such a right in a subject, otherwise, after the years of prescription, without such possession, it will revert back to the crown, from which the right has originally flowed. Here the respondent has failed to prove such a possession as in law amounts to a clear exercise of the right claimed. The "advocatione et donatione ecclesiarum bene-"ficiarum et capellaniarum earundum et suis pertinen. jacen. "infra vicecomitatum de Berwick," &c. are mere words of general style or form, and do not specially convey the patronage of the united parish of Buncle and Preston. Any subsequent renewals of that grant could not be extended beyond the rights previously conveyed; and this, when supported by the fact established, that the crown here has the first and the last act of possession, gives a clear right of preference to the crown of the patronage in question.

Pleaded for the Respondent.—The grant of the barony of Buncle and Preston gives the right of patronage of this united parish to the respondent. And although the earlier grants quoted are general in their terms, as *cum advocatione et donatione ecclesiarum earundum*, yet by the late grants in 1707 and 1761, the right is more special and precise, and less general in its terms, and conveys the barony of Buncle

and Preston, "*cum jure patronatus ecclesiarum dict. terrarum dominii, &c., de Buncle et Preston,* which can only mean the patronage of the church of the united parishes of Buncle and Preston. The addition of the words *beneficiarum et capellaniarum earundum,* cannot destroy the legal meaning and import of the preceding words. If chapels alone had been meant, then these words would have been sufficient, but the "ecclesiæ de Buncle et Preston," most certainly meant, that the parish church of Buncle and Preston were also carried. The supposition of the appellant, that this was a mensal church, because the great tithes were allotted as a part of the patrimony of the see of Dunkeld, is clearly disproved. Had this been the case, the minister, or curate, would on all cases have been sent to undergo his trials, and would have been appointed by the bishop, but, in place of this, it is in evidence, that the bishop recommended one minister to the presbytery, and that the presbytery, on all occasions, took the minister on trials, and admitted him, which would not have been the case had it been a mensal church. In confirmation of the respondent's right, there is a possession far beyond the years of prescription, so as to cut off all question on the part of the crown, even supposing any doubt existed, founded on the generality of the words of the respondent's grants. The possession and exercise of the right is proved in three instances beyond dispute; and if there was ever any doubt as to his title, this is put to rest by the charter in 1707, which is clear, express, and special in its terms, applying to the patronage of the church of Buncle and Preston.

After hearing counsel, it was

Ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Fl. Norton, Tho. Miller, C. Yorke.*
For the Respondent, *Al. Wedderburn, James Burnet.*

Note.—Unreported in Court of Session.