

said superiorities, until redemption by the crown; but that right of the patrons again, was under this exception, in favours of ministers, viz. except where the said feu-farms are a part of the minister's modified stipend, or where the minister is, or has been, in the possession thereof for the space of ten years, which is the pursuer's case; and thereby he has right to what he has so long possessed. And as to the presentation by the Bishop of Dunkeld, supposing that it had been accepted, yet it is granted to Mr Young, as minister of Lethindie, and so is a natural and legal consequence of the minister's serving the cure there, and, accordingly, has ever since been enjoined by the minister as minister of Lethindie.

It was REPLIED,—That during episcopacy, the minister of Lethindie was of course chancellor of the bishopric; and, in many other cases, dignities of the church were annexed to the charge of ministers in particular parishes: nevertheless the parish and chancellery had different patrons,—the bishop was patron of the chancellery, and the parish was of a laic patronage. But, by the abolition of episcopacy, and all dignities of the church, the right of the minister to the chancellery ceased; and the feu-duties belonging thereto fell to the crown, *2do*, It is true, *decennalis et triennalis possessor* has a presumptive right; but that presumption may be elided by a contrary probation, that the right is in another, as it is made evident in this case. *3tio*, As to the act of Parl. 1690, it does not at all concern this case; for the clause in the act runs in these terms:—"Whereas there are certain lands and annual-rents holden of the said benefices, and benefited persons, from which patrons might have some benefit arising to them." Then the act proceeds to declare, that these superiorities shall belong to the crown, but reserving the feu-farms and feu-mails to the patron, till redemption, with an exception in favours of the ministers who have been ten years in possession of these feu-farms. So that the subject of that whole clause is concerning the superiorities of lands or annual-rents, which were formerly held of benefices, or benefited persons: whereas the feu-duties which are the subject of the present question, never did hold of the minister of Lethindie, but was a separate benefice, by a different presentation. The act of Parliament did only respect such benefices as had superiorities or annual-rents holding of them, whereof there are several in Scotland. And, for further clearing this point, suppose the church of Lethindie were vacant, the laic patron would lead no claim to the chancellery-duties during the vacancy; or, suppose the minister had not been ten years in possession, the patron would have had no right to these feu-duties, by virtue of that act of Parliament.

The Lords found, That the office of chancellor did not belong to the laic patron of Lethindie, but to the bishop of Dunkeld, during episcopacy; and that the chancellery-duties do now belong to the crown, and ought not to be allocated as any part of the pursuer's stipend.

*No. 162, page 226.*

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1717. *November 20.* PATRICK LYON *against* The JUSTICES of the PEACE of the Shire of Fife.

MR. PATRICK LYON, late episcopal minister at Kinghorn, being deposed by the Presbytery, set up a meeting-house in the same parish; and, upon application, by

certain ministers of the presbytery, to the justices of peace in the shire of Fife, they discharged him from preaching or exercising any part of the ministerial function within the town of Kinghorn, or any part of the shire. Of which sentence, Mr. Lyon offered a suspension, upon the reason of iniquity; in so far as, albeit the sentence of the presbytery could be sustained to deprive him of his benefice in the church of Kinghorn, which he had enjoyed by virtue of the 22d act of Parliament 1693, under the protection of the government, yet it could have no effect to hinder him to have the same privilege that all other ministers of episcopal ordination have, viz. the toleration act; according to which he did present the instructions of his ordination, which he required to be recorded, and craved the assistance of the said Justices of Peace in the enjoyment of his meeting-house.

It was ANSWERED,—That he was not in the same condition with other episcopal ministers, because he was deposed by the Presbytery, and so, as to all civil and legal effects, was to be considered as a laic. Neither could the Lords enter upon the consideration of the justice or injustice of the sentence of deposition, which could only be cognosed by a superior church judicatory; in as far as, albeit the episcopal ministers, and especially those under the protection of the government, were not assumed by the presbytery to a share in the government of the church, yet they are subjected to the authority of the church judicatures in Scotland, by the 5th act Parl. 1690, and the 22d act Parl. 1693; which did authorise the ministers and elders, in whose hands the church government was thereby established, to try and purge out all insufficient, negligent, scandalous, and erroneous ministers, by due course of ecclesiastical process and censures; and farther provided, that whatsoever ministers, being convened, shall either prove contumacious, in not appearing, or be found guilty and censured, whether by suspension or deposition, they shall *ipso facto* be suspended from, and deprived of their stipends and benefices. And, by the said 22d act 1693, there is protection granted to episcopal ministers then in their churches, upon certain conditions therein mentioned, and especially that they apply themselves to church judicatories, in the terms of that act: certifying such as shall not qualify themselves, and apply to the church judicatories, within the space therein limited, that they may be deposed by the sentence of the assembly, or other church judicatories, *tam ab officio, quam a beneficio*; and such ministers as do apply, and offer to qualify themselves, shall have his Majesty's full protection, ay and while they be admitted and received by the church judicatories; provided always that the benefit of that act shall not be extended to such ministers as are scandalous, erroneous, or insufficient; but these, and all others in like manner guilty, are declared to be liable to the power and censure of the church, as accords. And Mr. Lyon being censured by the church, for suffering the Pretender's proclamations to be read in his church, and praying by name for the Pretender as King James VIII. notwithstanding that he had taken the oaths required by law, and being in use to pray for the King and Queen in their respective reigns.

It was REPLIED,—That the censure, (which was very rigorous and severe, considering that he was under the impression of armed force,) he conceived, was not in the power of the Presbytery; because, all that was intended by these acts of Parliament, was to authorize the church judicatures to disable episcopal ministers from enjoying church benefices; but it was not in their power to unminister, by sentence of deposition, those who were never of the presbyterian

communion; and, therefore, though the act 1690, does expressly subject episcopal ministers to the censure of the church, by suspension and deposition, yet that is by the last words of the act explained, so as they shall only be deprived of their churches and benefices; and the design of the act of Parl. 1693, was to the same effect.

It was DUPLIED;—Both acts do clearly subject the episcopal ministers, whether in churches or out of churches, to the censure of the church, even to deposition; and although, on such depositions, it be declared, they shall *ipso facto* lose their stipends and benefices, yet that does noways restrict the legal effect of deposition; and the act of Parl. 1693, does further clear the same, and enables the church judicatories to proceed the length of deposition in express terms, *tam ab officio, quam a beneficio*, and that either in case of not qualifying themselves, as by that act is required, or in case of error or scandal.

The Lords refused the bill of suspension, in so far as it is founded on the reason of iniquity. *Vid. 22d November, 1717, infra.*

*No. 173, page 238.*

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1717. *November 22.*      PATRICK LYON *against* The JUSTICES of PEACE of the Shire of Fife.

[*See the preceding Case.*]

MR. PATRICK LYON'S meeting-house in Kinghorn, being shut up by a sentence of the Justices of Peace, in manner more fully mentioned betwixt the same parties, the 20th instant, the Ordinary reported a separate reason of suspension of the said sentence, viz. that albeit the Lords had formerly refused his bill, in so far as it was founded upon the incompetency of the presbytery's censuring him who was minister of the church of Kinghorn, under the protection of the government. He now insisted on this further reason, that the Presbytery had declared his church vacant, and supplied the church with another minister; to which censure he submitted, and thereby was in the same case with all the other episcopal ministers in Scotland, who had not enjoyed benefices under the protection of the government; and, by the toleration act, it was free for any episcopal minister to set up a meeting-house, as he had done, in the manner directed by the said toleration act; and the justices of peace, and all judges, were by that act obliged to protect them. And if it were in the power of the church judicatories to depose all episcopal ministers who had never joined in their communion, they might, in a great measure, elude the benefit of the toleration act, and make the differences wider, and possibly might even pretend to exercise jurisdiction over them after they had set up meeting-houses.

It was ANSWERED,—It was fully cleared, when the suspension was formerly reported, that, by the tenor of the 5th Act, Parl. 1690, and by the 22d Act, Parl. 1693, all the episcopal ministers of Scotland, whether enjoying their churches or not, were subjected to the censure of the church judicatories by law established, with relation to their life, doctrine, or scandal; and, therefore, albeit it were instructed in the most authentic manner, that the suspender's church was declared