

1745. February 27.

The RELICT and CHILDREN of ROWAN *against* NEILSON and Others.

By act 1690, when the patron is Popish, he is to apply the vacant stipend to pious uses within the parish, at the sight of the presbytery. Application having been made by the relict and children of Mr Rowan, the last incumbent of the parish of Parton, to Glendinning of Parton, the patron, who was Popish, he recommended to the presbytery to make out a gift of a year's vacant stipend in their favour; which the presbytery having accordingly granted, and the donees having thereupon obtained general letters of horning, and charged Neilson of Corsack and the other heritors; they suspended upon two grounds, *1st*, That the exception in the act 1690 discharging general letters in favour of ministers on their decrees of locality for their stipends, is personal to the ministers themselves, and by no means inherent in the stipend, to be communicated to every person who obtains a right to vacant stipend; *2dly*, That the use for which this grant was made, was not a pious use in the sense of law: That what is to be considered as a pious use, is to be gathered from the 18th act, Parl. 1685, wherein all the particulars are mentioned, viz. building bridges, repairing the church, maintaining the poor, to which the heritors are obliged to contribute out of their own funds, where there is no common fund to be so applied; it being thought reasonable that the heritors, who have the burden of the minister's stipend during the incumbency, should be eased during a vacancy, by having the stipend applied for the public uses of the parish; whereas in this case, the relict and children of Mr Rowan had a free fund among them of at least 6000 merks, and therefore could not be reckoned to fall under the description of the poor mentioned in the statute; and that even some of the children had not their residence within the parish, and the law is limited to pious uses within the parish.

A bill against the interlocutor of an Ordinary repelling these reasons of suspension was refused without answers.

*Fol. Dic. v. 4. p. 52. Kilkerran, (PATRON.) No 1. p. 373.*

1751. June 26. COCHRAN of Culross *against* STODDART.

THE charge of second minister of Culross becoming vacant by decease in November 1746, Mr Charles Cochran of Culross presented thereto Mr William Trotter, probationer, who accepted; and the presentation and acceptance were notified to the moderator of the presbytery, 4th May 1747, and produced to the presbytery 3d June; and 1st July there was produced to them a charter of the patronage of the kirk of Culross, which had formerly belonged to Mr John Erskine of Carnock, dated 12th February 1747.

No 33.

The patron's powers with respect to vacant stipends.

No 34.

A patron found to have right to the fruits of a benefice, where a minister had been settled, though there was a suit depending concerning the right of patronage.