

sasines for Inverness-shire, Bishop of Ross's sasine in these patronages dated September 1637. 26th June, Remitted to the Ordinary to hear the objection to the disposition to the Bishop and to the sasine. Refused the petition and adhered as to the other point. (See No. 7.)

No. 6. 1753, May 9. HERITORS AND MINISTER OF LANARK *against*
THE CROWN FACTOR.

THIS parish became vacant 4th August 1748, and Lockhart of Lee as Patron presented Mr Dick, and the town of Lanark claiming also the patronage presented Mr James Gray, Minister of Rothes, and in November 1748 the Presbytery preferred Lee's presentation as having the better right to the patronage. 20th December 1748, A presentation to Mr Gray was signed by the King, and with Mr Gray's acceptance was presented to the Presbytery in January 1749, and in March 1749 Lee raised a declarator of his right of patronage, wherein he called the Crown, the burgh, and Lockhart of Carnwath, and in April 1749 raised a declarator, wherein he called the Crown, the burgh, and Lockhart of Lee, and both declarators being conjoined, the Crown compeared by Lord Advocate to defend against both; and while that process went on in the Court of Session, many various proceedings were had in the Church judicature, which made the round twice of the Presbytery, Synod, and Assembly; and at last in October 1750, Mr Dick was by the Presbytery and Syond of Glasgow ordained Minister of Lanark. By the stops of procedure in the declarators Lee seemed at last pretty backward and dilatory, so that it was not decided till 10th July 1751, when it was found that for ought yet seen the Crown had the best right to the patronage, and was assoilzied from both declarators; and thereupon in August 1751, the Court of Exchequer gave a factory to James Carmichael to levy the vacant stipends, and in consequence thereof a multiplepinding was raised in name of the heritors, which was this day reported by Drummore. The Crown's factor claimed, because the Crown had duly presented and the Presbytery had not given obedience. The Minister claimed as being lawfully ordained, and though the Crown had presented, and is now found to have the best right for ought yet seen, yet that was not till after he was ordained, and that without any herry, the vacancy having subsisted two years and two months; that Lee had produced a charter under the Great Seal in 1647 containing *novodamus*, since which there had been no opportunity of presenting till now, and Lee has had the only possession that could be had by gifting the vacant stipends for the use of the Minister's widow in 1708, and though that charter was found insufficient, being only passed in Exchequer without any warrant from the Crown, yet the Presbytery did right finding him in possession to obey his presentation, and could not let the Church remain vacant for years till the point of right should be settled; and the rule in the Canon law is in case of such disputes in patronage, that if they are not decided in four months from the vacancy the Church must be settled. Lord Advocate replied, That the Canon law is not binding here, that the point of right would have been decided long before the settlement had it not been Lee's affected delays till the settlement was over. At advising I gave my opinion that the Church judicatures were not obliged to wait years till a controversy touching the patronage should be decided. That such was my opinion in the case of the

parish of Culross, 26th June 1751, when I was single, that I thought the two cases quite similar, but my opinion was still the same, as that was but one decision. Kilkerran and Drummore were both of my opinion in this case, and said there was an essential difference betwixt it and that of Culross, for that here there were two presentations, whereas there was but one in that of Culross, though there the town claimed the right of settling the second minister, and were so far in possession, that the second Minister first settled there was chosen by them, and since that time all the settlements were by calls without presentation, and what they insisted for was, the moderation of the call. The President thought there was a difference betwixt the two cases, but if he had been then in the Court, that I should not have been single, for that he would have been of my opinion. Upon the vote we preferred Mr Dick, the incumbent, *renit.* Milton, Minto, Justice-Clerk, and Shewalton; and for the interlocutor were Strichen, Kilkerran, Kames, Drummore, and I; and the President quoted a case of Sir Alexander Cumming, determined by the House of Peers, that he said was quite similar, where they found that Sir Alexander had the right of patronage; but in respect that the Church was settled, while there was one interlocutor of ours unaltered, finding some defect in his right, therefore they found, that the Minister settled had right to the benefice, and that on the motion of the late Duke of Argyle. 24th November, The Lords altered the last interlocutor, six to five, and the President and Justice-Clerk not here. 2d March 1753 Again altered, and adhered to the first interlocutor, six to five and Drummore in the Chair.

No. 7. 1753, July 27. URQUHART of Meldrum *against* OFFICERS OF STATE.

IN a competition for the patronage of a kirk, between Urquhart of Meldrum pursuing declarator of his right, and the Crown, this patronage had once belonged to the Bishop and Chapter of Ross, and had been conveyed to Sir Robert Innes; and in 1634 and 1637 there was a contract between Sir Robert, the Bishop of Ross, and King Charles I. whereby Sir Robert resigned that and a great many patronages in favour of the Bishop, who thereon obtained a charter and was infeft. But prelacy being soon after abolished, these patronages were in 1656 conveyed by Sir Robert to the Earl of Cromarty, then Sir George M'Kenzie, with some other subjects, but excepting the patronages from the warrandice. But after the Restoration, the Bishops came again in the possession by presenting Ministers. But after the Revolution, Cromarty presented to several of the Churches. The patronage of the kirk of Cromarty was with the estate conveyed to his son, Sir Kenneth M'Kenzie, and was afterwards sold as bankrupt, and purchased by Urquhart. The Officers of State now produced (as is observed No. 5.) the Bishop's charter, and an extract from the records upon it; and the debate thereon before the Ordinary was reported to us. Urquhart objected to the contract, that the witnesses to Sir Robert Innes's subscription (which was in 1634) are not designed; 2dly, The precept of sasine was not produced. 3dly, Objected to the sasine, that the notary does not specify the symbols delivered, but only in general bears, "*juris solemnitatibus in similibus fieri consuetis debite observatis.*" 4thly, That the extract does not bear the notary's usual sign or mark, which objection it was said was the stronger that the