

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.

No 22.

Alternate
right to pre-
sent.

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. the Earl. The last by the Earl, in 1750, was protested against by Lethem, which clearly interrupted any prescription. At any rate, there was no room for prescription in the present case; for as the Earl's title could give him only an alternate right, so that could never be a title to acquire the sole right. THE LORDS found Miss Brodie entitled to this vice of presentation. See APPENDIX.

Fol. Dic. v. 4. p. 50.

1778. *January 22.* THOMAS TAIT *against* GEORGE SKENE KEITH.

No 23.
Right of the
patron to
present by a
commission-
er.

THE late Earl Marischal having his residence in a foreign country, committed the management of his affairs in Scotland to Messrs Alexander Keith, elder and younger; and the commission under which they acted contained a special power to grant presentations to the churches whereof he was patron.

In 1776, the church of Keith-hall, in the gift of Lord Marischal, became vacant. Two presentations were granted; one on the 9th May, in favour of Skene Keith, by Lord Marischal's commissioners, who had previously received a letter from him, desiring them to present Keith. This presentation was transmitted next day by post to the presentee. The other was executed on the 10th May by Lord Marischal himself at Potsdam, in favour of Thomas Tait, and was on the same day transmitted by post to his commissioners, but without instructions to forward the presentation to Tait. The commissioners having already presented Keith, sent it back to the patron at Potsdam, from which it was afterwards transmitted to the presentee.

After some procedure in the church-courts, mutual declarators were brought at the instance of Keith and Tait, for ascertaining the preference of their respective presentations.

Pleaded for Tait; imo, The power of presenting cannot be delegated to a factor. It is a faculty personal to the patron. In no statute or law-book is mention made of presenting by a commissioner or factor.

The act 10th Anne, c. 8. obliging the patron to qualify, proceeds on this principle, that the right of presenting cannot be delegated. By that statute, § 6. and 7. the patron is strictly required to take the oaths to government; and, if suspected of popery, to subscribe the formula, before presenting, otherwise the presentation is declared to be null.

If it had been lawful to present by a factor, the act of Parliament, in order to prevent these regulations from being defeated altogether, would have required the same oaths to be taken by the factor presenting, as by the patron when he presents. But, as it was understood to be the law, that the factor could not present, this was unnecessary. Accordingly, in practice, no popish patron attempts to present by a factor; and it is always thought necessary that the patron, who does not chuse to take the oaths required by the statute, should