sustained, albeit having the Sub-dean's consent; and so, in this judgment of letters conform, the said two heritable rights were everted. No 2.

Act. *Advocatus.* Alt. *Nicolson & Aiton.* Clerk, *Gibson.*

Durie, p. 502.

1632. ——. The L. of LUGTON *against* The L. of EDMONDSTON.

No 3.
Presentation of a preceptor to an hospital.

THE Laird of Lugton having comprised from the Laird of Ednam the patronage of Ednam Hospital, presents thereunto a Preceptor, from whom he takes an infeftment of the lands of Fallow, holding of the preceptory in James Pringle of Buckholme's name, and upon his infeftment pursues the tenants for their mails and duties. *Alleged*, They were tenants, at least possessed by tolerance of one Brakenrig, who was lawfully provided to the said preceptory by umquhile Andrew Laird of Edmondston, and by virtue thereof in possession 25 years. *Replied*, Any presentation Brakenrig had was null, in respect that no collation nor institution followed thereupon, which is necessary in all benefices; 2*do*, It never came in Brakenrig's hands, but remained still with the Laird of Edmondston in his charter-chest, where it was yet lying, neither had ever Brakenrig done any deed as Preceptor, or was acknowledged for such. *Duplied*, 1*mo*, No necessity of collation; because not a benefice of cure; 2*do*, Sufficient that the presentation was lawfully subscribed by the patron; and the defenders offered to prove, that Brakenrig was ever since in possession of a duty of 20 merks yearly from Edmondston. *Answered* to this last part, Not relevant; unless it were alleged, that these 20 merks were paid by virtue of some right (either feu or tack) set to Edmondston by Brakenrig; especially since the pursuer offered to prove, that Brakenrig paid all that time mail and duty to Edmondston himself.—THE LORDS repelled the exception, in respect of the second part of the reply, except the defenders would allege that duty of 20 merks to have been paid for some right made to Edmondston by Brakenrig. And for the first part of the reply, anent the wanting of collation, they passed it over, and gave it not an answer.——1632. *December* 11.——Next *alleged*, They were tenants to Sir John Stirling, who was infeft by Brakenrig, and by virtue thereof in possession. *Replied*, His infeftment was null, as proceeding *a non habente potestatem*; Brakenrig's right being found null for the cause foresaid. *Duplied*, The cause why Brakenrig's right was not found good, was because he had never done any deed as Preceptor, which now could not be said, he having given the infeftment foresaid. *Triplied*, That the infeftment could not sustain his right; because, after the pursuer's, which was given by a Preceptor lawfully provided, and no alleged possession of Brakenrig's, after the lawful provision of another, could make his null right valid.—THE LORDS

No 3. repelled this allegeance also and duply, in respect of the reply and triply.—3*tio*, Sir John Stirling, who was present, offered to satisfy the pursuer of all his sums he had comprised for, whereby his interest to quarrel his infeftment would be taken away. The pursuer *alleged*, His comprising could not be redeemed *hoc ordine*, especially the defender having no right to redeem. *Replied*, He offered it in name of Ednam, from whom the pursuer had comprised. *Duplied*, He had comprised only from Ednam the right of patronage, which was the most could be redeemed from him; but as to his infeftment given him by the Preceptor he had presented, the Laird of Ednam had no right to redeem that, because he could pretend no right to these lands himself, they being provided by his grandfather to the children of his second marriage.—THE LORDS would not sustain this offer at the defender's instance.

Spottiswood, (KIRKMEN, &c.) *p.* 192.

*** Durie reports this case.

ONE having comprised from the Laird of Edmondston, as lawfully charged to enter heir for his father's debt, the right of the patronage of the Hospital of Ednamspittal, which pertained to the house of Edmondston, with other lands of Ednam comprised also; and thereafter the compriser having presented a Preceptor to that Hospital, which Preceptor immediately thereafter sets a feu, with consent of the said compriser, who was patron by virtue of his comprising, of the lands of Falla, which pertains and were doted to the said Hospital, to another person, for payment of a certain duty to the said Preceptor; which feuar, so infeft, pursuing the tenants to remove from the said lands, who *excepted*, That they were tenants to such a Preceptor yet alive, who was presented 25 or 30 years since to the said preceptory, by umquhile the Laird of Edmondston, goodsire to this now Laird, and which Preceptor had been these 25 years in possession of the said lands, by receiving of 20 merks from the possessors of the same lands, as duty therefor, and yet continues in possession thereof; so that this Preceptor being yet alive, no other Preceptor constituted and presented by the compriser, nor no feuar made by him, can have right to these lands, seeing this comprising, which is the ground of all, is but deduced *in anno* 1631, and so is 25 or 30 years after the other was presented, and who since has continually been in possession; this exception in this judgment possessor of removing was repelled, and not sustained to defend the tenants; for, as it was replied for the pursuer, the LORDS found the right of preceptory, made by the patron, whereupon the exception is proponed, not sufficient to make that person lawful Preceptor, seeing the presentation thereto was not delivered to that Preceptor, but remained still with the patron, and became not the Preceptor's evident; and also seeing the alleged Preceptor was a tenant of a part of the same Hospital-lands, and paid duty therefor himself to the Laird

Edmondston the patron, who presented him: And the Lords found no defect in the presentation, albeit collation and institution followed not thereon, as was alleged by the pursuer against the excipient's presentation, produced by him; for it was found, there was no necessity of collation nor institution, in such presentations made by laicks, for which *vide* July 4th 1627, M'Kenzie, Minister, See APPENDIX. And it was not respected what the excipient duplied, that there was no necessity now, after so long time, to prove delivery of the Preceptor's presentation, seeing it was extant, and must be presumed to have been delivered; likeas, without delivery, it is sufficient, in respect of the 25 years possession, as said is, seeing *in beneficialibus, decennalis, et triennalis possessio pacifica* is enough, *etiam sine titulo, vel præsumit titulum*, especially the Preceptor being yet living, and in possession, and against another Preceptor so lately presented by this compriser; and the patron's having of the presentation is no impediment, nor the Preceptor's paying duty for a part of the lands; for the patron, upon any condition betwixt him and the Preceptor, might keep this presentation, that it might appear on all occasions requisite, that he had made bargain with one who was Preceptor. Likeas, it is no impediment, but that the patron might suffer the Preceptor to bruik, and pay duty for a part of the land, after that he had covenanted therefor with the Preceptor, and that the same Preceptor had received duty for the rest of the lands belonging thereto: Notwithstanding whereof, the exception and duply were repelled. And thereafter the defender eiking to his exception, that the said Preceptor had set a feu of these lands to another, to the behoof of the L. of Edmondston, whereby he had done all deeds requisite to make a Preceptor; this was sustained, albeit this right was made since the comprising, because the defender offered instantly to pay to the compriser all the sums for the which the comprising was deduced, which was instantly permitted, without necessity to put the party to a redemption. No 3.

Act. *Stuart*. Alt. *Nicolson*. Clerk, *Scot*.

Durie, p. 657.

1666. *July* 6.

PARSON of MORHAM *against* LAIRD of BEARFORD and BEINSTOUN.

No 4.
Patronage is transmissible without infeftment.

THE Parson of Morham pursues reduction of a tack set by the former Parson to Bearford and Beinstoun, as being granted without consent of the patron; the defenders *alleged*, Absolvitor; because the tacks were set by the Parson, who had commission from the Earl of Buccleugh, patron, to set tacks; 2*do*, The tacks were set with consent of Francis Steuart, Lord Bothwel, expressly, as patron, which Francis Steuart had right to the patronage, in so far as this