

Patronage, is termed in England a Right of Advowson: not as some would have it, because the Patron advocat alium to supply the Vacancy; but because he is bound to protect and defend the Church from Oppression and Violence.

And for the same Reason, he who hath such a Right of Patronage is called Advowee or Avowee, in Latin *Advocatus*.

It is a known Brocard among the Glasseors on the Canon Law, that patronium faciant dos adificatio fundus. So that according to the general Opinion of Interpreters, one and the same Church may have several Patrons: as if one should build it, or buy a Corner of it, another bestow the Ground, and a third settle a Revenue for the Ministers Maintenance; all which things say they intitle one to a Right of Patronage. Some indeed deny that Patronage is acquired by giving the ground only. *Fr. de Roze ad tit. x. de jure patronat. proleg. cap. 13.* But all own, that even the Rebuilder of a demolished Church has a Title to the Patronage of it. And as to the first Builder, that his Right falls if acquired only by the Building: but that if he also had indowed the Church, he becomes a joint Patron with the other who rebuilt it. *Fr. de Roze ibid. cap. 14. 200. ad tit. x. de jure patron. n. 6.* When we say that a Right of Patronage is got by Dotation, that is understood of a competent Indowment: for he who bestows something that is not a sufficient Maintenance for the Incumbent, doth not become Patron, but is only styled a Benefactor. *Garcia de benef. tom. i. p. 5. cap. 9. n. 52.* But several concurring and contributing at the same time, tho' unequally, by whose joint Contribution a competent Indowment is made up, are understood to be joint Patrons. *Garcia ibid.*

Some will have Patronage to be acquired ipso facto by the indowing or building of a Church or giving the Ground to build on, tho' not expressly reserved by the Founder, if not originally renounced by him. *Garcia ibid. n. 62. et seqq. Fr. de Roze ibid. cap. 5.* But others more probably hold, that a Right of Patronage is not got, unless it be expressly reserved in the Foundation. *Writ Bengauis de Benef. ad verb. cum suo redditu cap. 4. p. i. s. 6. n. 4. Hope min. Pratt. tit. x. de Benef. 945. Milkenzie Observ. on Act. 7. Par. i. J. 6. Cause jns patronatus est servitus libertati Ecclesie impartita; and Services are never presumed in Law. Besides otherwise all Churches would be under Patronage, all of them having been built and indowed by some body: whereas yet we find that many are free. Thus one having mortified a year's salary to the Bibliothecary of a College without any mention of Patronage, the College was found to have the free power of electing such Bibliothecary without any Patronage to the Mortifier 17 June 1675. *Darvill contra Town of Aberdeen.* A Mortification being made for a second Minister in a Church, without reserving or protesting for the Right of Patronage in favour of the Mortifiers; it was found that the Patron of the first Minister, and not the Mortifiers, was Patron of that second Minister 10 November 1680. *Town**

Town of Haddington contra E. Haddington. But an express Reservation of Patronage to the Mortifiers in the Erection of a second Minister, secures it to them against the Pretences of the Patron of the first Minister. *Her Stat. Just. lib. 2. tit. 8. 27.* And a Town who had mortified a stipend to a second Minister, and had been in constant Use of presenting and calling the Minister, without any Question made by the Patron of the Church, was declared to have Right to the Patronage of that second Minister 10 January 1683. *Town of Dundee contra E. Landordale.* Seeing in that Case Custom and Possession cleared the Meaning of Parties. As by our Custom *vassalus vassalli mei est vassallus meus*; and when the immediate Vassal fails, the mediate Vassal ascends up in his place, and holds by the same Tenure of the paramount Superior: so by the Canon Law, *patronus patroni mei est patronus meus*. But the Patron of a Church, where of the Beneficed Person was Patron of another, was found not to be Patron of that other Church, without instructing a particular Right to the Patronage thereof, 5 Feb. 1709. *Magistrates of Lanark contra E. Murray.*

Churches before the Reformation were so generally under Patronage, that none were presumed free: and the Pope's Right as universal Patron was sustained, when no Body else could instruct a Title to the Patronage. All Rights of Patronage were originally of the same Kind and Nature, but came at Length to be distinguished into Ecclesiastical and Laick. Ecclesiastical Patronages are those belonging to Churchmen as such, that is upon Account of the Ecclesiastical Benefices they possess. Under which I comprehend such as fell to the King at the Reformation, as come in place of the Pope; and such of these as have flowed from his Majesty since that Time. Laick Patronages are those belonging to Laymen as such, or to Churchmen *tantum quilibet jure hereditario*. Lay Patronages were first set up by Justinian, upon which a base Merchandise hath followed; and nothing hath more defiled the House of God, *Burnet's Hist. of the Rights of Princes chap. 4.* Some Laick Patronages belong to the King, *jure privato* qua Founder or Indower of the Benefice, or as Purchaser of the Right of Patronage from private Persons; or belonged to the King as Portments of Lands or Barons fallen in his Majesty's Hands by Recognition or Forfeiture. Sir Thomas Hope (*min. Pratt. tit. x. de Benef. 945*) is of Opinion, that all Lay Patronages in Scotland did once pertain to the King, and were by him transferred to the Subjects, for the Reasons following: 1. When R. Malcom disposed all his Lands to his Subjects, reserving only the Casualties of Ward and Marriage, he disposed to them at the same Time all Patronages within the Compass of the Lands conveyed. Which must be the rather supposed,