

Bulls for one and the same Benefice, even while it is full called gratia expectativa, Favours expectant, or Promises of vacant Benefices, or Bulls for Church preferments before they ~~become~~ become void. For the Pope takes upon him to confer beneficia vacatura ex plenitudine potestatis. Which Provisions were caution'd against by Law in Scotland Act 26. Par. ii. §. 3. If an Incumbent thro' Age or Infirmitie was rendered incapable to serve the Cure, he used to get a Helper joyned to him Carpoz. jus consist. lib. i. tit. 2. def. 15. n. 2. et seqq. No ecclesiastick Patron could present himself to the Benefice C. per nostras 2. 6. extr. de jure patron. D' Epiques ibid. n. 25. Bengaus ibid. ad verb. conceffa cap. ult. n. 2. 3. §. Tholof. Syntagm. part. 2. lib. 17. C. 4. n. 9. Zoes. ad tit. X de jure patron. n. 33. The Quality of the Person to be presented by the Patron, is sometimes expressly determined in the Foundation Charter, viz. that he should be of such or such a Nation, Name, Family, Condition or Quality; which ought to be observed Fr. de Roze ad tit. de jure patron. C. 25. Some require, that the Party presented have all the canonical Qualities of a Beneficed Person, from the very Time that the Benefice became void. Others distinguish between a Right of Patronage, which by the Foundation carries Power to present any sufficient Person in general; and that by which the Patron is tied up, to one of such a Quality or Circumstances: thinking it necessary in the last Case, for the Party presented to have the requisite Qualities when first the Vacancy commences; and sufficient in the first Case, that he be qualified at the Time of the Presentation Fr. de Roze ad tit. X de jure patron. proleg. cap. 2. 6.

In the Case of two presented by an Ecclesiastick Patron, the first Presentation was preferable. But where two were presented by a Laick Patron, the Bishop had his Option to give Collation to either of them C. cum autem 2. 4. extr. de jure patron. Bengaus ibid. ad verb. cum suo reditu C. 4. part. i. §. 7. n. 9. Craig Feud. lib. 3. tit. i. §. . a Patron cannot after he hath presented one to the Benefice depart at his Pleasure from his first nomination, and present another Fr. de Roze ad tit. X de jure patron. cap. 2. 4. Zoes ad tit. X de jure patron. n. 40. When there are more Patrons to a Church than one, they present by Turns C. ult. de jure patron. in Clementin. D' Epiques de benef. ecclis. tom. 4. tit. 3. n. 9. If one of three joint Patrons succeed to another, he must present twice where the third presents but once Zoes ibid. n. 54. Some alledge that by presenting twice vice or the three last times, one of several joint Patrons acquires a preferable Right exclusive of the rest. vide Fr. de Roze

Roze ibid. cap. 16. But with us, that doth operate only a Possessory Right in a Competition with other Patrons, pro ea vice, without Prejudice to the rest, to declare their Right for the future Michonze Decree on Act 7. Par. i. §. 6. The Pope might prevent the Presentation of an Ecclesiastick, tho' not of a Laick Patron Bengaus ibid. n. 11. 12. that is, at any Time before the Presentation pulsaverat aures ordinarij Fr. de Roze ibid. proleg. cap. 2. 2.

Four Months were allowed to a Laick Patron C. cum propter 27. extr. de jure patron. C. un. §. i. extr. cod. in 6. Duaren de S. Ecclis. minist. lib. 5. cap. 4. Carpoz. jus consist. lib. i. tit. 2. def. 15. D' Epiques ibid. n. 7. Reg. majest. lib. i. cap. 2. And Six Months to an Ecclesiastick Nov. 12. 3. cap. i. §. 2. de un. §. i. C. cameo 2. 2. extr. de jure patron. Duaren ibid. Carpoz. ibid. D' Epiques ibid. Reg. majest. ibid. If the Patron did not present within the legal Space there was allowed an orderly Gradation jure devolutio from Inferiours to Superiours up to the Pope. But our Law gave the Pope no jure devolutio to the Prejudice of the Sovereign Act 25. Par. ii. §. 3. Which Term for presenting did not run from the Date of the Vacancy, but from the Time that the Patron came to know of it or might have known it C. quia divinitatem in fin. extr. de conceffa prebend. C. licet magister 3. extr. de supplend. negl. prelat. Act. 7. Par. i. §. 6. I have sometimes observed the jure devolutio or Law of Lapse provided in the Foundation-Charter of the Benefice by a Clause establishing the Right of Presentation in Favour of certain Persons primo loco, and allowing others to present if they neglect to do it within <sup>such</sup> a Time. The Reasons for introducing this Law of Lapse were 1<sup>o</sup> To hinder a long Vacancy of the Benefice, which is prejudicial to the Church C. quam sit 6. de elect. in 6. nam interim gregem dominicum Lupis rapax invadere possit C. ne pro defectu 41. extr. de elect. 2<sup>o</sup> The Rights of the Church might perish by long wanting an Administrator 3<sup>o</sup> If the Patron were left at Liberty to present when he thought fit, possibly he would never do it, that he might always have the Disposal and Application of the Fruits of the Benefice during the Vacancy. And further it seem'd to be the Interest of the Commonwealth, so to restrict and tie up the Patron as in the Civil Law on their neglecting to fulfill the Will of the Testator within Year and Day, the Inheritance falls to the Substitutes or Coheirs or others honour'd by the deceased Auth. hoc amplius C. de fideicom. And a Mother neglecting to seek Tutors for her Children, is excluded from succeeding to them in their Estate l. 2. §. 23. ff. ad Senat. Tertull. A Superior to whom the planting of a Benefice accrueth, by the Law of Lapse jure devolutio, must also observe any Rules in the Foundation-Charter concerning the Condition and Qualifications of the Incumbent to be put in Zoes. ad tit. X de prebend. et dignit. n. 22.

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