

documents they have, for clearing and astructing the right of the said patronage ; and, in the mean time, appointed the kirk to be supplied by the bishop, because Waterton as yet has shewn no right to it standing in his person, and is not as yet infest. *Vide supra*, about a patronage contraverted between *Southesk* and *Northesk*, *in fine*, No. 572, [14th June, 1677] ; as also *infra*, [No. 658, 20th November, 1677,] between the *Town of Hadington* and the *Earl of Hadington*.

*Advocates' MS. No. 656, folio 308.*

1677. *November.*

ACTS OF SEDERUNT.

THE Lords enacted, that parties who minded to complain of interlocutors given in the Outerhouse, should do it within twenty-four hours, otherwise that they consign a dollar with their bill, by way of amand, not to be returned though the bill be granted. *2do*, That qualified oaths should be immediately discussed as to their intrinsic qualities and competency ; because by the reservation of these debates to the conclusion of the cause, the Lords found themselves exceedingly retarded in the advising. But this has not yet taken full effect. *3tio*, That informations be given in at the advising of concluded causes, that being the most critical period of them. See this enlarged *alibi*.

*Advocates' MS. No. 657, folio 308.*

1676 and 1677. THE HERITORS and TOWN OF HADINGTON *against* The EARL OF HADINGTON.

1676, *December*.—THE Duke of Lauderdale, Clerkington, Barns, and sundry other gentlemen, heritors within the parish of Hadington, raised a declarator against the Earl of Hadington, and Mr James Forman, whom he had presented to be second minister at the kirk of Hadington ; to hear and see it found and declared, that the patronage does not belong to the said Earl, and therefore the said minister to be removed. This last part of the summons, I think, will hardly be sustained ; for Hope, in his Collection, lib. 2. tit. 14. Of the Patronage of Kirks, fol. 78, shews the incumbent will bruik the benefice during his life, albeit the patron's right be reduced ; but the first alternative is unquestionably relevant.

*Advocates' MS. No. 517, § 10, folio 268.*

1677, *November 20th*.—IN the declarator, mentioned *supra*, [Number 517, Section 10,] at the instance of the heritors and town of Hadington against the Earl of Hadington, that he hath no right to present the second minister of Hadington ; the Lords advised the dispute this day ; and finding that there was no writ produced anent the constitution of the second minister's provision, they, before answer, ordain either party to adduce what probation or evidences they can, for clearing *quid vere actum erat* at the first settlement of the second minister ; if his provision should have been by voluntary contribution, or if the same should affect the teinds ; and if there was any decret of the commission for plantation of kirks in relation

to the said provision; and whether Mr William Trent was presented by any of the parties, or how he came in.

Upon this both parties took out diligences, and led witnesses. See the informations beside me, and the practise of Dr Reid's heirs their right of presenting the bibliothecar at Aberdeen; and how far the *jus patronatus* is *individuum*, that he who presents the first, must, by necessary consequence, have also the second, if another minister be judged necessary at that place. Some thought the rights of all parties so obscure, that it might be reputed a waiff patronage, and as caduce devolve to the King, none of the pretenders having a clear title thereto.

*Advocates' MS. No. 658, folio 308.*

[See the subsequent parts of the report of this Case, Dictionary, p. 9903.]

1677. November 21. MINISTER of Tillycoutry *against* NICOLSON of Tillicultrie.

THE minister of Tillycoutry pursues Nicolson of Tillicultrie, before the commission for plantation of kirks, for an augmentation of his stipend. Against which it was offered to be proven, by the minister's oath, that he had promised to his parishioners faithfully never to seek an augmentation; and he confessed the promise judicially at the bar. Yet the Bishops of St Androis and Galloway forced the commission to decern an augmentation, on this pretence, that the promise was *super re turpi vel illicita*, and granted through ignorance and simplicity; and that it was their part, though he were not seeking it, to provide churches with competent stipends. It was not denied but they might augment, to take commencement after his incumbency, and that his promise was only personal, and could not prejudice his successor, they being but administrators of the benefice; but it was *inauditum et contra bonos mores* that it should not tie himself, and he coming against his promise *exceptione doli mali repelli et summoveri poterat; et in omnibus grave est fidem fallere, multo magis* in a churchman, who ought to be patterns of faithfulness and all other virtues. What if he had sworn not to seek an augmentation? It is like the bishops would have absolved him, as they did dispense themselves from the oath of the Covenant. See a case somewhat like it, in my Summary of the Commission Books.

*Advocates' MS. No. 659, folio 308.*

1677. November 23. AGNES CRAWFURD, and her CHILDREN, *against* ALEXANDER KENNOWAY.

ALEXANDER KENNOWAY had become cautioner in a contract of marriage, for the husband's obligements in favours of Agnes Crawford, the wife, and the heirs and bairns to be procreated of that marriage. There are children; and the father dying, Alexander is charged to fulfil. As to the wife's liferent, he cannot evite the securing her in that; and if the other part of the obligement had only mentioned *bairns*, without adjecting the word *heirs*, there would have been as little doubt but he would have been liable to the bairns likewise. But his defence against them