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 practique 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 prejudge 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 Crawfurd, 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