

patron might have presented to the whole parsonage and vicarage. Yet he was content to give them the Lords' answer on it.

*Act.* Charger, Lermont and Lockhart. *Alt.* Spottiswood.

*Advocates' MS. No. 42, folio 77.*

*June 30.*—IN the foresaid cause of the minister at Auchterhouse against Mr. Robert Hay of Dronlaw and others, the Lords found it not worth the taking to interlocutor about the *jus devolutum*, and therefore found that the Bishop *jure devoluto* might present to all which the lawful patron might have presented to. Yet where he sought six chalder of victual, as the parsonage and vicarage teinds, yearly, for the space of eight or ten years; the Lords assoilyied the defenders therefrom, viz. from all bygones, in respect of their *bona fides* to continue the former use and custom; but find the minister has right to the hail parsonage in all time coming.

*Advocates' MS. No. 46, folio 77.*

1670. *June 30.*

ANENT BONDS OF PRESENTATION.

ONE being charged on a bond wherein he was bound either to sist another at such a day, or to pay such a sum, *nomine poenæ*; he suspends that he must be liberate from that bond, (though in the same he seemed to renounce *omnibus casibus fortuitis*;) because he offers him to prove that the party whom he should have sisted, was sick of a fever, and not able to come out of a bed at the time, and none is tied to things impossible. This was found relevant.

*Vide infra No. 58, July 2, 1670.*

*Act.* M'Kenzie. *Alt.* Lockart.

*Advocates' MS. No. 47, folio 77.*

1670. *June 30.* The BISHOP of ROSS *against* DONALD FOULLER.

THE Lords would not sustain this as a relevant reason of reduction of a bond: That it was granted by one taken with caption, and by reason of sickness upon his body unable to go to prison, (all which the very bond narrated;) since that is *metus justus et licitus*, being done *authore prætoris*. Yea, they found a man being charged with horning on a decret, and taken with caption, and then, in the hands of the messenger, granting such a bond, that the said bond was a homologation of the decret: though a man cannot be properly said to homologate but where he has a free consent, which is not here. *Vide L. 22. D. quod metus causa; et Cragium, pagina 127.*

*Act.* Anderson. *Alt.* Seaton.

*Advocates' MS. No. 48, folio 77.*