

1642. February 16. LADY BRUNTON *against* ———.

The Lady Brunton, relict of the sometime Bishop of Glasgow, her executors, pursuing for the duties of some lands, wherein she was infeft in life-rent by her umquhile husband, of the term of Martinmas, *in anno*        years, she living to Martinmas day that year, and not dying till the afternoon that day about three or four hours; and the heir of her husband, who was heritor of that land, alleging, that that term could not pertain to the life-renter, or to her executors, because she dying on Martinmas day, the same term behoved to pertain to the heritor of the land, and not to her; the Lords found, that this term was due to the life-renter and her executors, and not to the heritor, seeing the life-renter lived to the Martinmas day, and died on Martinmas day at afternoon, as said is, which they admitted to the pursuer's probation; so that hereby the life-renter living to the entry of the term, she was found to have right to that term, begun to run before her decease, as said is, she having lived to the afternoon of that same day, whereon the term fell.

Act. *Stuart.*

Alt. *Nicolson & Mowat.*

Clerk, *Gibson.*

*Durie, p. 894.*

No. 16.  
*Dies inceptus  
pro completo  
habetur.*

1662. July 24.

MR. PATRICK WEYMS *against* MR. JAMES CUNNINGHAME.

Mr. Patrick Weyms having an order of Parliament for a term's vacant stipend of the parish of Laswade, Mr. James Cunninghame alleged that term's stipend was not vacant, but belonged to him as incumbent, viz. Whitsunday 1659, because he was admitted before Michaelmas 1659, and shortly after Whitsunday; and so the legal terms of stipends not being divisible at two terms, but at Michaelmas jointly; he being incumbent before Michaelmas, hath the whole year.

The Lords repelled this allegiance, but preferred Weyms, and found that Ministers had right to their stipend termly, and if he entered before Whitsunday, he had right to the whole year, and if after Whitsunday, and before Michaelmas, but to the half.

*Stair, v. 1. p. 135.*

No. 17.

1663. July 9.

MR. THOMAS KIRKCALDY *against* MR. ROBERT BALCANQUHIL and HERITORS of TRANENT.

The heritors of Tranent raised a double pointing against Mr. Robert Balcanquhil, on the one part, and Mr. Thomas Kirkcaldy on the other part, both claim-

No. 18.  
Stipend of a  
Minister re-

No. 18.   
 poned shortly   
 after Mi-   
 chaelmas as   
 having been   
 wrongously   
 deposed,   
 found to be-   
 long to the   
 incumbent   
 possessing till   
 Michaelmas   
*bona fide.*

ing the stipend of Tranent, 1662. It was alleged for Mr. Robert Balcanquhil, he ought to be preferred, because he was Minister at Tranent, by presentation and collation, long anterior to Mr. Thomas Kirkcaldy; and albeit he was deposed *in anno* 1648, yet he was reponed by the Bishop of Edinburgh and Synod of Lothian, in October 1662, because of that narrative. that he was unlawfully deposed *in anno* 1648, and so being reponed before Martinmas 1662, he thereby must have right to the half, due at Martinmas 1662. It was answered for Mr. Thomas Kirkcaldy, that Balcanquhil's re-possession being after Michaelmas 1662, which is the legal term of stipends, and he having served till that time, by a title standing, reposition can operate nothing before its date, and so cannot reach to Michaelmas term.

The Lords preferred Mr. Thomas Kirkcaldy to the whole year.

*Stair, v. 1. p. 197.*

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1664. June 21. HAY *against* COLLECTORS OF VACANT STIPEND.

No. 19.

In a suspension betwixt Mr. John Hay, Minister of Mannour and the parishioners, it was found, that he being presented and admitted in the month of August, has only right to the half year's stipend that year, and the other half to be vacant.

*Gilmour, No. 104. p. 78.*

\* \* Stair reports this case :

The parishioners of Mannour, which is a pendicle of the parsonage of Peebles, being charged for the stipend of the year 1662, suspend upon double poinding, and call the Ministers collectors of the vacant stipends, and the Parson of Peebles. The Minister alleged that he was presented by the Parson of Peebles' Patron, in August 1662, after which he continued to preach at the kirk, and was still upon his trials till he was admitted in October 1662, and therefore the whole year's stipends 1662 belongs to him, because the legal terms of teinds and stipends, is not as of other rents, Whitsunday and Martinmas, but one term for all, viz. the separation of the fruits at Michaelmas; and therefore, if he had had right to the drawn teind, he might have drawn the whole, so the whole tack-duty must belong to him. It was alleged for the Parson of Peebles, that this kirk being a pendicle of his parsonage, and sometime served for a less, and sometimes for a more stipend, as he agreed, it is not a fixed stipend, but as a helper, and therefore the vacancy thereof belongs not to the collector of the vacant stipends, but returns to the parson, who has right to the whole fruits of the benefice, by his right of presentation and collation. It was alleged for the collectors of the vacant stipends, that his stipend was not as the allowance of an helper, but was a several congregation, separate from the parsonage of Peebles, and at the Parson's presentation, and that