

1670. *January 26.*MR. JOHN M'QUEEN *against* The MARQUIS of DOUGLAS and MR. PETER PEARSON.

No. 22.

A stipend found to belong to a Minister who was translated in January, but continued preaching till April.

Mr. John M'Queen having been Minister at Carmichael, and transported to Edinburgh, he continued to serve the cure at Carmichael till March 1669, and pursues the Marquis for the half year's stipend 1669. Compearance is made for Peter Pearson his successor, who alleged that he is presented in January to the whole stipend 1669, and thereby has right; and M'Queen was transported before January 1669, and though he continued to preach till February or March, yet being transported, he was no more Minister, and did not preach till the complete sowing, or Whitsunday, which is the legal term for half a year's stipend of transported Ministers. It was answered for Mr. M'Queen, that Pearson not being admitted Minister till August 1669, can have no right to a term anterior, and the patron's presentation can give him no right, because the patron has now no power of the vacant stipend.

The Lords preferred M'Queen, seeing nothing was alleged for the collector of the vacant stipend, who, it is like, might have excluded both; for at Whitsunday, neither of them was *in officio*, or *beneficia*.

Stair, v. 1. p. 662.

1670. *February 22.* MURRAY of ACHTERTIRE *against* SIR JOHN DRUMMOND.

No. 23.

A purchaser entering at Whitsunday has no interest in the crop then sowed.

The deceased Earl of Tullibarden having wadset the lands of Logy-Almond, to William Murray of Achtertire, by a contract of wadset in February 1656, by which the Earl assigns Achtertire to the mails and duties of the lands, due for the crop 1656, at Whitsunday or Martinmas, or any other term, and obliges him to deliver to him the keys of the house, and to enter him in the possession at Whitsunday 1656; the Earl having sold the lands to Sir John Drummond, whose entry was to be at Whitsunday 1668, and having used an order of redemption in the Earl's name, because the reversion did not extend to the Earl's assignees, and having obtained declarator, decerning Achtertire to denude himself of the lands, who in obedience of the decret grants a renunciation, reserving to himself the mails and duties for the crop and year 1667;—Achttertire insists for the duties of the crop 1667, which are payable at Martinmas 1667. The way of payment of the rent of those lands, and many others is that the tenant enters at Whitsunday, and pays his rent at Martinmas thereafter for the whole year; and if he remove at the next Whitsunday, he pays no rent at that term, but leaves his corns sowed by him upon the ground, which he shears after his removal. Whereupon it was alleged by Sir John Drummond, that this way of payment being beforehand duty, whereby the tenant pays at Martinmas before he sows the crop, for the crop of

the year of God subsequent to the Martinmas, that therefore Sir John entering at Whitsunday 1668, and having right to the duties due for the crop and year 1668, he has right to the duties due at Martinmas 1667, because that duty albeit not payable in the year 1668, yet is payable for the crop 1668, seeing the tenant, if he were removing at Whitsunday 1668, would for the payment made at Martinmas 1667, carry free with him without any payment, the whole corns of the crop 1668, so that if Sir John should enter to the void possession of the land at Whitsunday 1668, he should have no benefit of the crop 1668, but only of the crop 1669. It was answered for Achtertire, that he has the only right to the rent payable at Martinmas 1667, and Sir John can have no right thereto, because his entry being but at Whitsunday 1668, he can have no interest in the crop then sowed, and standing on the ground, unto which no buyer did ever pretend, but the seller, if he be in natural possession, takes always with him his own growing crop, even after the buyer's entry into possession, and so do all outgoing tenants, and so did Achtertire at his entry, which being at Whitsunday 1656, he lifted the duties due at Martinmas thereafter, but lifted not the Martinmas duty of the crop 1655, payable before his wadset, and therefore now he must lift the rent due at Martinmas 1657, or otherwise he wants a year's annual-rent; and if Sir John Drummond should lift a year's rent due at Martinmas 1667, and another year's rent due at Martinmas 1668, he should have two full year's rent of the land within half a year of his entry, which was at Whitsunday 1668, and which can never be understood, except it had been clearly so expressed by the parties. Neither is there here any further forehand duty, than what ordinarily tenants paying silver rent, and not inlayed or rentalled victual, entering at Whitsunday do, for they pay the one half of their rent at Martinmas thereafter, and the next half at the Whitsunday following that Martinmas, and for this year's rent they must have a year's crop both of grass and corn, and all the difference here, is, that the rent due for the possession from Whitsunday 1667, to Whitsunday 1668, is payable together at Martinmas 1667, in the middle of the year, whereas if it had been according to the ordinary course of silver rent, being payable half at Martinmas 1667, and half at Whitsunday 1668, Sir John Drummond, who entered but at the Whitsunday 1668, could have no right to the rent even payable at Whitsunday 1668, so neither can he claim it, when it is payable jointly at Martinmas 1667.

The Lords found that Achtertire had right to the rent payable at Martinmas 1667, and that Sir John Drummond had right to no part thereof.

Stair, v. 1. p. 674.

1670. *June.*

MR. JAMES LAWTRIE, Minister at Chirnside, *against* MR. WILLIAM CARBRAITH,
Minister at Morebattle.

In a double poiding raised at the instance of the Parishioners of Chirnside, against Mr. James Carbraith, comppearance was made for the said Mr. William, their last minister, who was transported to Morebattle, betwixt whom the compe-

No. 24.
Similar to
M^cQueen,
No. 22.
supra.