

No. 24. tition was for the half of the stipend 1669, from Martinmas to Whitsunday. It was alleged for Mr. William, That albeit he had made admission of his place of being Minister in October, yet having actually served at the said kirk until the last of February, he ought to have right to the half-year's stipend, because in such cases *annus inceptus habetur pro completo*, much more where he did restrict to the half-year, especially being in competition with his successor, whose presentation was only dated in April, and had neither collation nor institution until August thereafter.—It was alleged for the now entrant, That Mr. William could have no right, because he had formerly demitted his place in the Bishop's hands in October, and accepted of a presentation to Morebattle, by virtue whereof he had right, and had uplifted that year's stipend of the kirk of Morebattle, at the least the half thereof, and so could not possess both stipends, plurality of benefices not being allowed.

The Lords having considered the case, found, That there was a great difference betwixt a stipendiary Minister within burgh and beneficed persons; so that albeit in the case of M'Queen against the Marquis of Douglas, who was called to the town of Edinburgh, they did allow the half year both of the kirk from which he was called and the half-year's stipend given by the Town of Edinburgh, in respect that the Town did ordinarily allow the same for the charges of transportation, and that a stipendiary Minister when he dies, there is no sum due to his relict and bairns; yet they found not the like reason in the case of beneficed persons; but as to this point they did not decide, seeing it was offered to be proved, that albeit Mr. James' presentation did bear date in April, yet it was never delivered to him, nor to any other for his behoof, until several months after, which was found relevant to exclude him for that half-year's stipend preceding. But if the collector of the vacant stipends had compared, it is thought he would have been preferred to them both, seeing the one had demitted his office, and the other was not called during that half year.

Gosford MS. p. 112.

1671. July 20.

GUTHRIE *against* MACKERSTON.

No. 25.

In a competition betwixt an heir and an executor, anent the right of a mill, whereby the tacksman's entry was at Whitsunday, where the first terms of payment of the rent was at Candlemas, and the second at Whitsunday, the life-renter having survived Candlemas, and died before Whitsunday, the question arose, how far the executor of the liferenter had right, it being alleged, that the executor of the liferenter could only have right to the one-half, the life-renter having only survived the first term as in house mails.

The Lords found, that the legal terms of a mill rent being Whitsunday and Martinmas, the life-renter having survived both the legal terms, had right to the whole year's rent in the same way as in land rents, and not to the one term as in house mails.

Stair, v. 1. p. 762.

* * Gosford reports this case :

No. 25.

Captain Guthrie having married the Laird of Mackerston's relict, who was life-rentrix of the mill of Mackerston, they did grant a tack of the mill to Murdoch, for payment of a yearly duty, at two terms in the year, viz. Candlemas and Whitsunday thereafter, the entry of which tack being at Whitsunday 1667, and the Lady surviving Candlemas thereafter, the said Captain did pursue the Miller for a whole year's duty. It was alleged for him and Mackerston, who was heritor, that the pursuer could have no right but to the half-year's duty, seeing the life-renter died before the second term of payment, and so that term did belong to the fiar. It was answered, That as in tacks of lands the legal terms are Whitsunday and Martinmas, and if the life-renter survive Martinmas, the whole year's duty is due to her and her executors, notwithstanding of any conventional terms; so in the tacks of mills, the life-renter's right ought to be regulated according to the legal terms, seeing mill duties are payable for that same year's crop that the vic-tual is ground at the said mill. It was replied, That there was a great disparity betwixt tacks of lands and mills, the benefit whereof is not for any crop of corns, but are *quotidianæ obventiones ob operas & servitia*, and so ought to be regulated according to the terms of the tack; and the entry to mills not being the same as to lands, but sometimes at Whitsunday, and sometimes at Martinmas, they cannot be regulated by the legal terms of land rent.

This was continued to be decided until the 4th December thereafter, as you will there find. See p. 15892.

Gosford MS. p. 191.

1671. July 25. CAPTAIN GUTHRIE *against* The LAIRD OF MACKERSTON.

Captain Guthrie having married Dame Margaret Scot, and she dying in possession of the lands of Mannehill, laboured by her husband and her in the month of April, Mackerston, as heritor of the land, craves the rent of the land for that year, in respect the life-renter neither lived till the first legal term, which is Whitsunday, nor till Martinmas. It was answered, that by immemorial custom, life-renters have right to the crop of lands sowed by themselves, whether they attain to the term of Whitsunday or not, neither were they ever found liable for any duty therefor.

Which the Lords sustained.

Stair, v. 1. p. 766.

* * Gosford reports this case :

In the forementioned action, at Captain Guthrie's instance against Mackertson, it being alleged, That he ought to have allowance of a year's duty of a room of the life-rent lands, in respect that the lady, who was wife to the Captain, died in

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A life-rentrix found to have right to the crop of lands laboured by her, though she died in April.