

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