

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 pouding 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.

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.