

or surrogation, but by complete confirmation. And found, That whatsoever testaments were actually confirmed within the time of the defunct's life, or annat, should belong to his executors; and that the quots of all confirmations after the annat, should belong to the incumbent, though the defunct died before. And found, That the late Bishop having died before the late act of Parliament anent the annat, that it was to be ruled by the former law and custom, as by a letter from King James, and a determination of the Bishops, by virtue thereof, viz. That if the Bishop die before Michaelmas, he hath all that year in which he dies, and if after Michaelmas, he hath all theyear in which he dies, and the half of the year thereafter.

No. 32.

*Stair, v. 2. p. 439.*

\* \* Dirleton reports this case :

The Lords found, That a Bishop and executors, had right only to the quots of such testaments, as were confirmed in the Bishop's time, in his own right, as Bishop for the time : And the said quots, being in effect sentence-silver, *dies cedit*, by the confirmation; so that whosoever is Bishop then, has right to the same.

They found likewise, That quots being a part of the Bishop's patrimony and rent, the quots, of all testaments confirmed within the half year, after the Bishop's decease, did fall under the ann, and belong to the Bishop's relict and executors. *Vide Carpzovium. Lib. 1. Jurisp. Consistorialis de Salaris defuncti Pastoris semestri.*

*Dirleton, p. 184.*

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1681. *January 12.* TROTTER *against* ROCHEAD.

Where the husband survived Martinmas, his relict provided to a jointure of certain chalders of victual, to be uplifted yearly betwixt Yule and Candlemas, was found to have no claim for any part of that year's rent, but that the husband's executor had right to the whole.

No. 33.

*Fol. Dic. v. 2. p. 453. Stair. Fountainhall.*

\* \* \* This case is No. 12. p. 2375. *voce* COLLATION.

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1683. *February.* BLAIR *against* SKEEN of Hallyards.

Mr. John Blair, Minister at Scoon, having pursued the Lady Hallyards for a half year's stipend of the church of Auchtertoill, due at Martinmas 1682; alleged for the defender, That she could not be liable for the half year's stipend, because the pursuer had obtained a presentation to the church of Scoon, and institution

No. 34.  
Found that a Minister had right to the half year's stipend pre-

No. 34.  
ceding Whitsunday, having served the cure till after that time, though he had received collation and institution to another church before that Whitsunday, which gave him right to that half year's stipend of that church also.

and collation thereupon before Whitsunday 1682; so that he being transported, and having right to the half year's stipend of the other church, he cannot pretend right to the half year's stipend of this church. Answered, albeit the pursuer had obtained a presentation, institution, and collation of the church of Scoon before Whitsunday 1682; yet he having served the cure at the church of Auchtertoill, by preaching and administering the Sacraments till after Lambmas 1682, he had right to that whole year's stipend of the church of Auchtertoill; and it was *jus tertii* to the defenders, Whether the pursuer got that half year's stipend of the other church or not, but he having served the cure at the church of Auchtertoill till after Lambmas, he had right to the whole year's stipend. The Lords found the defender liable for the half year's stipend for the crop 1682, payable at Martinmas 1682, in respect the pursuer served the cure at the said kirk after Whitsunday 1682.

*Sir P. Home, v. 1. No. 434.*

1684. February 14.

BAILLIE against CUTHBERT.

No. 35.  
Where a jointure is payable in victual, though not secured on land, the case is the same as to terms due, as if the relict had been in-  
left.

The case between Baillie and Cuthbert being reported by Forret, the Lords found, in regard the liferentrix outlived Martinmas, and died not till the 4th of December, that therefore the half year's rent preceding Martinmas was her's, and belonged to her executors; though the bond for payment of the victual to her was but a personal bond, not relative to any lands, and made the life-rent payable, the one half at Lambmas, and the other at Candlemas; and that she died long before Candlemas, her term; for the Lords found, though these were the conventional terms, prolonged for the ease of the party debtor, yet they *una voce* found she needed not live to the conventional term of Candlemas, to give her right to that term; but that it was enough she out-lived the legal term of Martinmas, at which time the corns are all stacked, and the farm is due by tenants; though Yule and Candlemas are indulged them to pay it in; and at Martinmas *cessit dies obligationis*, so that it becomes due, *licet nondum venit*, so as to be exacted.

*Fountainhall, v. 1. p. 270.*

1685. February.

HOME against GALBRAITH.

No. 36.  
A Minister having been turned out of his cure in January for not taking the test, was found to have

Mr. William Home, Minister of Jedburgh, having removed from the church upon the account of not taking the test, but having served the cure to Whitsunday 1682, at which time Mr. William Galbraith entered to the church, and Mr. William Home having assigned the half year's stipend from Martinmas 1681 to Whitsunday 1682, to Archibald Home, his brother; he pursues Mr. William Galbraith, he having received the half year's stipend from the heritors, for pay-