

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-

ment of the same. Alleged for the defender, That Mr. William Home, the pursuer's cedent, had no right to that half year's stipend, seeing he did not take the test before the 1st of January, 1682, as is appointed by the act of Parliament. Answered, That albeit Ministers, as other persons in any other public office, were appointed to take the test before the 1st of January, 1682; yet that did not prejudice them that did not take the test of the current half year's stipends; for those ministers that went out upon the account of the test, could be in no worse case than if they had died before the 1st of January, 1682, in which case their representatives would have had right to the half year's stipend upon the account of the ann; but more especially the pursuer ought to have right to the same in this case, because his brother did serve the cure till Whitsunday 1682; as also, the defender was not placed minister at Jedburgh till after Lammas 1682, and he being formerly minister at Morebattle, he did get that half year's stipend from the heritors of the parish of Morebattle, and he ought not to have both the stipend that half year. Replied, That Mr. William Home, the pursuer's cedent, having refused to comply with the act of Parliament, he was in a worse case than if he had been naturally dead, and so ought not to have right to that half year's stipend as in the case of an ann; and he could have no benefit by his serving the cure from Whitsunday 1682, because he did it contrary to the act of Parliament enjoining the test. The Lords found, that the pursuer being put out of his charge for not taking the test in January 1682; he has no right to the Whitsunday term's stipend thereafter, and therefore assoilzied the defender.

No. 36.  
no right to  
Whitsunday's  
term's stipend  
thereafter.

*Sir P. Home MS. No. 708.*

1687. *February 26.*

FEUERS of the BISHOPRICK of DUNKELD *against* DR. BRUCE.

The feuers of the Bishoprick of Dunkeld, and others liable, suspend on double poinding, that they were distressed for the half year from Whitsunday till Martinmas 1686, both by Dr. Bruce, late Bishop, and by Mr. John Hamilton, present Bishop, who alleged that Dr. Bruce was deprived by the King's letter on the 3d of June last, long before Michaelmas, (though there be no sentence of a Judge as yet against him;) and so not having served till Michaelmas, he cannot claim it, by the 13th act 1672. Answered, You was not installed till Martinmas, and so you have no right. Replied, This half year being vacant in the King's hands, there is a gift of it yet blank in the name. The Lords, though the Chancellor opposed it all he could, preferred Bishop Bruce; but it is intended to get the King's order to fill up Bishop Hamilton's name in the gift, which will carry it.

No. 37.

*Fountainhall, v. 1. p. 450.*