No. 18.
poned shortly after Michaelmas as having been wrongously deposed, found to belong to the incumbent possessing till Michaelmas *bona fide.*

ing the stipend of Tranent, 1662. It was alleged for Mr. Robert Balcanquhil, he ought to be preferred, because he was Minister at Tranent, by presentation and collation, long anterior to Mr. Thomas Kirkcaldy; and albeit he was deposed *in anno* 1648, yet he was reponed by the Bishop of Edinburgh and Synod of Lothian, in October 1662, because of that narrative that he was unlawfully deposed *in anno* 1648, and so being reponed before Martinmas 1662, he thereby must have right to the half, due at Martinmas 1662. It was answered for Mr. Thomas Kirkcaldy, that Balcanquhil's re-possession being after Michaelmas 1662, which is the legal term of stipends, and he having served till that time, by a title standing, reposition can operate nothing before its date, and so cannot reach to Michaelmas term.

The Lords preferred Mr. Thomas Kirkcaldy to the whole year.

Stair, v. 1. *p.* 197.

No. 19.

1664. *June* 21. HAY *against* COLLECTORS OF VACANT STIPEND.

In a suspension betwixt Mr. John Hay, Minister of Mannour and the parishioners, it was found, that he being presented and admitted in the month of August, has only right to the half year's stipend that year, and the other half to be vacant.

Gilmour, No. 104. *p.* 78.

*** Stair reports this case:

The parishioners of Mannour, which is a pendicle of the parsonage of Peebles, being charged for the stipend of the year 1662, suspend upon double poinding, and call the Ministers collectors of the vacant stipends, and the Parson of Peebles. The Minister alleged that he was presented by the Parson of Peebles' Patron, in August 1662, after which he continued to preach at the kirk, and was still upon his trials till he was admitted in October 1662, and therefore the whole year's stipends 1662 belongs to him, because the legal terms of teinds and stipends, is not as of other rents, Whitsunday and Martinmas, but one term for all, viz. the separation of the fruits at Michaelmas; and therefore, if he had had right to the drawn teind, he might have drawn the whole, so the whole tack-duty must belong to him. It was alleged for the Parson of Peebles, that this kirk being a pendicle of his parsonage, and sometime served for a less, and sometimes for a more stipend, as he agreed, it is not a fixed stipend, but as a helper, and therefore the vacancy thereof belongs not to the collector of the vacant stipends, but returns to the parson, who has right to the whole fruits of the benefice, by his right of presentation and collation. It was alleged for the collectors of the vacant stipends, that his stipend was not as the allowance of an helper, but was a several congregation, separate from the parsonage of Peebles, and at the Parson's presentation, and that

no helper has a presentation, and that the incumbent, not being admitted till after Michaelmas, has no right to any part of the fruits of that year, though he was presented before, because the kirk cannot be said to be full, but vacant, till the Minister be admitted. No. 19.

The Lords found that this kirk having a presentation, could not return in the vacancy to the Parson of Peebles, and that the presentation being at Lambmas, and the incumbent serving at the kirk, and entering to his trials immediately till he was entered, which was in October thereafter, and that he had right to the half of that year's stipend, not being presented before Whitsunday; and found the other half to belong to the collector of vacant stipends.

Stair, *v.* 1. *p.* 201.

1666. *July* 13. The EARL of KELLY *against* THEODORE BEATTON.

No. 20.
A pensioner dying before Whitsunday, the Lords found, that his representatives had no right to that crop, in the course of which he died. The cases of a pensioner and a life-renter as similar.

Theodore Beatton having assignation to a life-rent pension from Sir James Scot of some part of the Kings-barns, and Sir James dying before Whitsunday, the Earl of Kelly having got a three nineteen years tack from the King's Majesty of the same lands, it was alleged by Theodore Beattoun, that Sir James Scot's right being a pension, whatever time of the year Sir James died in, he behoved to have right to that year's duty as if he had survived both the Whitsunday and Martinmas terms of that crop. The Lords found that Theodore had no right to that crop wherein the defunct died, having deceased before the term of Whitsunday; and found no difference betwixt a pensioner and a life-renter.

Newbyth MS. p. 71.

1668. *July* 24. JEAN CARNEGIE *against* The EXECUTORS of her FIRST HUSBAND.

No. 21.
Rent of land *in medio* at the proprietor's death, how it divides betwixt heir and executors?

Jean Carnegie being infeft in the lands of Middleton by her first husband, and thereafter married to Patrick Gray of Braco, her second husband; there was a tack set by them of the said lands, for an yearly duty payable at Whitsunday, after the separation of the corns from the ground; and the said Patrick dying in May 1666 before Whitsunday, and his son having taken up the duty from the tenants at the Whitsunday thereafter; the said Jean did pursue for payment thereof, as belonging to her the life-renter, seeing her husband died before the term of payment. Notwithstanding thereof, the defender was assoilzied; for the Lords found, That the husband having survived Whitsunday and Martinmas 1665, which were the legal terms of that year's crop, his executors had the only right to that year's tack-duty, and any obligement by the tack for payment at any term thereafter, did not prejudge their rights, or make the same due to the life-renter.

Gosford MS. p. 17.