

1676. *February.* SCROGIE, BISHOP of ARGYLE *against* —————

THE LORDS FOUND, in the case of Scrogie, Bishop of Argyle, that in transportation of ministers, it was not the date of the presentation or collation that made the kirk vacant from which he came, but his institution in the church to which he went: that being like seaisne, that consummates the act, and puts him in possession, and is sometimes by the canonists called *Beneficii Investitura*; so that the institution stops the vacancy of the church *ad quem*, and, in lieu thereof, the vacancy of the church *a quo* takes its commencement, unless it be also filled and supplied *ex incontinenti*. And the legal term of payment of minister's stipend being, by the act of the General Assembly at Montrois, (see the copy of it beside me,) in 1585, at Michaelmas, *quia tunc fruges* (out of which the teind is due) *sunt a solo separatæ*, through all the kingdom, which is also followed in practice; then if a minister's institution or entry be any time before that term of Michaelmas, he gets the half of that year's stipend; the other half being either due for incumbency, or falling under the anne, or under vacancy, and so will be due to the Colleges, conform to the late act of Parliament in 1672. See also the act of the same Parliament 1672, anent the anne, and my observes on it.

QUÆRITUR, If the glebe, as a part of the stipend, falls under the anne. *Videtur quod sic, nam lex non distinguit.* See *Dynus Mugellanus, in commentario ad regulas 1 et 2, Juris Canonici, in 6 Decretalium.*

*Advocates' MS. No. 462, § 1, folio 239.*

1676. *February.* The BISHOP of EDINBURGH *against* SIR A. COCKBURNE of LANGTON.

QUÆRITUR, If the patron of a kirk, to impede the *jus devolutum* to the king or bishop, present before the elapsing of the first six months after the vacancy, one that either embraces not or is not received by the bishop, and thereafter lets it lie over till near the end of the other six months, and siclike presents a person either unwilling to come, or not qualified; he seems fraudulently to shift and tergiverse, and to present only to save his right, and will not hinder the *jus devolutum* any longer; and the church ought not to stand unprovided at his pleasure, but a certain time may be limited to him within which he must effectually present, otherwise omit it *pro hac vice*. This was contended by the Bishop of Edinburgh in Sir A. Cockburne of Langton's case, who kept his kirk vacant by the space of two or three years, by the aforementioned artifice, because he could not get an indulged minister; at last he was forced to accept of a conformist. See *Gudelinus, de Jure Novissimo, libro 6to seu ult. cap. 8vo, ubi tractat de Jure Patronatus, pag. 340.* See act 115, *Parliament 1592.*

If the bishop present not within six months, either in his proper patronage, or where the right devolves, then some affirm he omits it *pro ista vice*, and it transmits to his superior archbishop, and he neglecting, to the king.

*Advocates' MS. No. 462, § 2, folio 239.*