

No. 11. to the Bishop; whereas the act of Parliament did only comprehend vacant kirks, which, by the death of the incumbents, had no titular. It was replied, That albeit it was a mensal kirk, yet being provided with a constant local stipend, the same, by the death of the incumbent, could not fall to the Bishop, who had only a right of collation, and so, being a vacant stipend, fell within the act of Parliament. The Lords did sustain the action, and found, That the stipend, being so settled by a decret of Platt, by the death of the last incumbent, it ought to be applied for pious purposes.

Gosford, No. 849. p. 537.

1676. December 12.

COLLEGE of GLASGOW against PARISHIONERS of JEDBURGH.

No. 12.

The Lords found, That a presentation of an actual Minister before the term, was not a complete right to the stipend, unless there had been a warrant for his transportation.

Reporter, *Thesaurer-depute.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 395. Dirleton, No. 398. p. 195.

* * Stair reports this case :

The College of Glasgow pursues the heritors of the parish of Jedburgh, for the vacant stipends of the term of ———, who alleged absolutor, because they had made payment *bona fide* to the incumbent, who was presented before that term, and begun to preach, and got collation and institution shortly after; and the Lords are always in use to draw back collations and institutions to the time that the person instituted begins to officiate by preaching. It was answered, That there is no legal title in any incumbent by presentation only, but by collation and institution; before which it cannot be said the benefice is full, and that it is not a like case, when an expectant is admitted to trials, and preaches; by which he is necessarily hindered to get collation and institution till his trial end; and in the case in question, where an actual Minister was transported from one church to another, who did preach only once or twice before the term in question, the parishioners might know, at the serving of his edict, if they had any ground to object, and who received the stipend, for that term, of the Church from which he was transported.

The Lords repelled the defence in respect of the reply, unless it were alleged that the incumbent had received collation before the term; but would not burden him to prove institution, which is frequently omitted in this Church.

Stair, v. 2. p. 476.