

No. 31.  
at Lambmas  
for one term  
that year.

they could not pretend payment *bona fide*, because the Bishop was consecrated before Whitsunday, and so ceased to be Minister of that parish; *2do*, Though he served till Lambmas, because the legal terms of stipends are Whitsunday and Michaelmas, or the sowing and separation, so that a Minister transported before Michaelmas, can have but the half year, which by the late act of Parliament is now so ordered in anns, which formerly had the privilege *quod annus ceptus habetur pro completo*, which was never so in the transportation of Ministers.

The Lords found, that the Bishop having served the cure till Whitsunday, the heritors were *in bona fide* to pay him for his incumbency only one term, he not having served till Michaelmas.

*Stair, v. 2. p. 401.*

1676. July 6. The BISHOP of EDINBURGH *against* WISHART.

No. 32.  
Found rela-  
tive to quots  
of testaments,  
in conformity  
with No. 29.  
p. 15895.

There being mutual declarations betwixt the Bishop of Edinburgh and the executors of the late Bishop, which of them had best right to the quots of testaments, confirmed after the death of the late Bishop; it was alleged for the executors of the late Bishop, That the quots of all testaments of defuncts, who died during the life of the said Bishop, or during the space of his annat, falls to his executors, because it is a part of the benefice, and as a liferent-escheat, or other casualty of the Bishop's vassals falling within his life, or his ann, albeit neither gifted nor declared, would belong to his executors, so much more the quots of testaments, of all who died within his ann, whenever they shall happen to be confirmed. It was alleged for the incumbent, That the quots of testaments were but a casualty, and no part of the yearly revenue of the Bishoprick, and are due for confirmation, which is an act of jurisdiction, and the executors, can have no jurisdiction; but all confirmations after the Bishop's death, are done by the authority of the incumbent; and as a composition to enter an appriser, or the *duplicando* for entering of an heir could not be due to the executors, but to the incumbent, who can only confirm, or receive, so neither can the quots of any testaments, but such as were confirmed during the defunct's life. And if the being confirmable were the rule, it would make the Bishops interfere, and to be in continual debate for quots, for twenty or thirty years, upon the account of the time of the defunct's death. It was answered, That the case is not alike, as in receiving vassals, which can only be done by the Bishop himself; but testaments are confirmed by the commissaries, without mention of the Bishop, who remains to officiate, both in the life of the defunct, and the incumbent, and therefore may be countable to both, as to all that died in the time of either.

The Lords considering that this case hath never been determined, resolved to clear the interest of defuncts, and incumbent Bishops so, as might occasion the least debate betwixt them; and found, that their interest should not be ruled by the death of persons, or their testaments being confirmable, or by any edict, charge,

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 the year 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-