

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.