

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.

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 vacaut stipends.

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

No. 19.

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

Theodore Beaton 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.*

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.

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

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 obligation by the tack for payment at any term thereafter, did not prejudice their rights, or make the same due to the life-renter.

*Gosford MS. p. 17.*

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