

1697. *February 23.*LOCKHART of Cleghorn and SOPHIA GUTHRIE *against* ROBERT WATSON.

No. 38.

The Lords preferred the donatar to the single escheat, before the donatar of the life-rent, as to the crop growing upon the ground at the time of the gift; in regard his intromission and possession were before the donatar of the life-rent had raised a declarator, and that it seemed to agree with the decision 2d February, 1627, Somervel, No. 5. p. 15878; and Sir George Mackenzie's opinion, in his Institutions anent Escheats: Yet the President differed, and thought, albeit the donatar of the single escheat had the right to the *ipsa corpora*, and to intromit with the crop, yet it was burdened with the hypothec of the farm and duty, payable out of it to the master of the ground, the rebel, and which the donatar to the life-rent might claim; but the plurality of the Lords thought, since it was here in the rebel's own hand, there was no rent to be paid out of it to any. Yet it was argued, If he had sold it at that time, he would have been liable to the buyer for the farm of that year's crop as a tenant.

*Fountainhall, v. 1. p. 565.*

1697. *July 2.* COUPAR *against* EARL of ROXBURGH.

No. 39.

Found, that an incumbent had right to the last half of the year's stipend, having been admitted to another church after Michaelmas, though during all that half year he resided not at the church from which he was transported.

*Fol. Dic. v. 2. p. 456. Fount.*

\* \* \* This case is No. 232. p. 12411. *voce* PROOF.

1704. *December 8.* ROBERT PATERSON *against* THOMAS SMITH.

No 40.

A liferentrix dying in the forenoon of Martinmas day, the question arose, whether her executors could claim that half year's rent as due. It was found, that the liferentrix attaining any

In a cause pursued by Commissary Robert Paterson against Thomas Smith, it came to be debated if a liferentrix dying on a Martinmas day in the forenoon, her executors could claim that half year as due. Some alleged, that, in favourable cases, *dies inceptus habetur pro completo*. Others said, Though it was favourable to life-renters, yet it was not so to fiars; and therefore it should be counted *de momento in momentum*; and, if one have a bond payable on Martinmas day, and should charge with horning for payment that day, it would be thought precipitant, seeing that whole day is in favour of the debtor, *et nec venit nec cessit dies* till the next day after, and then the *jus exigendi* begins. There is one practise observed by Durie in this case, on the 16th of February, 1642, Executors of the Lady Brunton *contra* the Bishop of Glasgow's Heirs, No. 16. p. 15885. where her executors are pre-