

1665. July 6.

Mr JOHN COLVIL *against* The LORD BALMERINO.

No 5.

If there be a new intrant, the profits of the glebe fall no farther under the annat, than with regard to crop sown before the minister's death.

MR JOHN COLVIL, as executor, confirmed to umquhil Mr John Colvil, minister at Kirknewton, pursues the Lord Balmerino for the stipend, the year 1663, and for the profit of the glebe. The defender *alleged* absolvitor; because payment is made *bona fide* to the intrant, before intending of this cause.—It was *answered*, It could not be paid *bona fide*, because the minister died after January 1663: Which being so notour to my Lord Balmerino, to whom the most of the parish belongs; and he being so near it, he ought to have made payment to no other, of that year which belonged to the defunct minister, as his annat, extending to the whole years; *annus inchoatus habetur pro completo*, as to the annat; so that if the minister lived till the 1st of January, he has that whole year.—The defender *answered*, That an annat is only due to the wife and bairns of the defunct minister; and this minister had none. *2do*, That the point is so dubious in law, he knew not that it would be his, unless he had lived till Whitsunday. *3tio*, The benefit of the glebe must be the intrants, and falls not under the annat, as a part of the stipend, no more than the manse.

THE LORDS repelled the defence as to the stipend, and found it belonged to the executor, as nearest of kin; and that the defunct surviving the 1st of January, gave him that whole year; but found that the glebe did not fall under the annat, nor did belong to the defunct, but only the crop thereof, if it were sown by himself. (See No 9. which is the same case reported by Newbyth.)

Fol. Dic. v. 1. p. 35. Stair, v. 1. p. 306.

1747. July 14.

JAMES, JOHN, ROBERT, and JEAN M'DERMETS, Children of the deceased Mr John M'Dermet, Minister at Air, *against* MONTGOMERY, his Relict.

No 6.

The relict has right to one half, the children to the other.

IT being controverted between the relict and the children of Mr John M'Dermet, late second minister at Air, whether the annat belonged to the relict and the children *per capita*, or if the children were only entitled to the one half equally among them, and the relict to the other half.

THE LORDS found the children were only entitled to the one half.

Fol. Dic. v. 3. p. 27. Kilkerran, (ANNAT.) p. 28.

1663. June 24.

ELIZABETH SCRIMGEOUR *against* MURRAY.

No 7.

Annat divides between the wife and

THE said Elizabeth pursued the executors of her husband, and insisted upon several points; *first*, she craved the annat, as belonging wholly to her, seeing there

were no children, and annat being in favours of the wife and children, the nearest of kin could have no part thereof.—The defenders *answered*, That the annat was introduced the time of Popery, when the (clergy) had no wife nor bairns, and so did still most properly belong to the nearest of kin, who would get it, if there were neither wife nor bairns.

No 7.
nearest in kin,
where there
are no child-
ren.

THE LORDS found the annat to divide betwixt the pursuer and the nearest of kin.

The pursuer insisted next, and *alleged*, That a bond bearing clauses of annualrent and obligation to infest, behoved either to give a right to the half of the stock, or else to a terce of the annualrents.

THE LORDS found the clauses of annualrent and destination, to exclude her from the stock as heritor; and the want of infestment to exclude her from the terce of annualrent.

The pursuer insisted in the next place, and produced a bond granted by her father to her husband; and here the longest liver of them two, and the heirs procreate betwixt them, without any addition or termination, failing these heirs, and without clauses of annualrents or infestment; and therefore she claimed the whole sum as being the longest liver.—It was *answered*, That this bond did not constitute in her only a liferent, according to the ordinary conception and interpretation of that clause, the longest liver of them two betwixt man and wife; but especially, heirs procreate betwixt them being mentioned, which behoved to be the man's heirs, who, if they had existed, would have had right as heirs to their father, not to their mother; and therefore the father behoved to be fiar, and the mother only liferenter.—It was further *alleged*, That beside the liferent, the pursuer behoved to have right to the half of the stock; because the sum being moveable, albeit the tenor of the bond made it payable to the relict for her liferent use, yet she behoved to employ it so, as the stock would remain; which stock would still be divisible betwixt the relict and the nearest of kin, as being moveable.

THE LORDS found, That the pursuer might take her choice of the liferent, or of the half of the sum, but would not allow her both. (See HERITABLE and MOVEABLE.)

Fol. Dic. v. I. p. 36. Stair, v. I. p. 194.

1679. January 22. SPENCE and CLERK against CRAIG.

JAMES SPENCE and John Clerk, as assignees by the legatars of Mr John Louthian, having pursued Beatrix Craig, his relict, as executrix, and thereupon a count and reckoning being appointed, the relict having confirmed the annat of her husband, she *alleged*, That she had the sole right thereto, in respect there were no children, and the annat not being *in bonis defuncti*, nor due to the defunct for his service, but a privilege indulged by law in favours of his nearest relations, needs no confirmation, and if he have no bairns, all belongs to his wife, which

No 8.
Found as
above.