

' is now settled to be thus, viz. If the incumbent survive Whitsunday, there shall  
' belong to them, for their incumbency, the half of that year's stipend or bene-  
' fice; and for the ann the other half: And if the incumbent survive Michael-  
' mas, he shall have right to that whole year's rent for his incumbency; and for  
' his ann, shall have the half year's rent of the following year; and that the  
' executors shall have right hereto, without expences or necessity of a confirma-  
' tion.

No 3.

23d Aug. 1672, Act 13. v. 2. p. 469.

1664. July 19.

ELIZABETH SCRIMGEOUR *against* EXECUTORS OF MR JOHN MURRAY.

IN a count and reckoning betwixt Elizabeth Scrimgeour, relict of Mr John Murray, minister, and his executors, these queries were reported to the Lords by the auditor. *First*, Whether the defunct, dying infest in an annualrent, could have an heir, as to moveable heirship?—THE LORDS found he would, seeing the annualrent was *feudum*, and he might thereby be esteemed as *baro*, as well as a petty feuer.

No 4.  
The annat extends to the profit of the glebe, if there be no new intrant.

*Quest. 2.* Whether the defunct, having died the day before Martinmas 1661, he would have right to any part of the stipend 1662, as the annat?—THE LORDS found he would have the half of 1662.—*Quest. 3.* Whether he would have like right to the glebe, as to the stipend, by the annat?—THE LORDS found that could not be debateable betwixt the defunct's relict and executors, albeit there was no compearance for a new intrant; in which case they thought, that so soon as the intrant were admitted, he would have right to the manse and glebe, and not the defunct, though the defunct's wife would have right to a part of the stipend due after his entry.—*Quest. 4.* Whether the heritable debt could exhaust the moveable estate of the defunct, to diminish the relict's part, especially if there be no heritable debt due to the defunct, or if the heritable debts due by him exceed those due to him.

THE LORDS found, That seeing the relict could have no benefit of heritable debts due to the defunct, being excluded by the act of Parliament 1641, renewed 1662, therefore she would have no detriment, by such heritable debts due by the defunct, whether they exceeded the heritable debts due him or no. In this report, it falling into consideration, whether the annat would only belong to the wife, there being no children; or half to the wife, and half to the nearest of kin, they thought it would divide equally betwixt them, though it was not resolved whether it needed to be confirmed, or would be liable to the defunct's debt.

Eol. Dic. v. 1. p. 35. Stair, v. 1. p. 219.