

## A N N A T.

1629. June 16.

SMEITON *against* The RELICT of the late MINISTER of ST BOTHANS.

THE late minister dying in April 1628, before either Whitsunday or Martinmas that year, and it being controverted betwixt the relict and the new intrant, if the stipend of that year, wherein the late minister died before any of the terms were come, should pertain to his relict and bairns, as for the crop, which would belong to them for the service of the late minister; or if they would have only right thereto, as annat, according to the order of the kirk:—THE LORDS found, That the late minister dying before any of the terms came, no part of that year's stipend was due to him for that year, and consequently could not be claimed by his relict and bairns by any other right, but as the annat; by virtue whereof only, it was found to pertain to them, and no otherwise; and that they should seek nothing of that crop 1629, for the annat; for the order of the kirk is, that if the minister live after Michaelmas, his executors get the whole year's stipend, as due to the minister for his service, seeing then the crop is separate from the ground; and also they will get the half of the year subsequent for the annat: But if the minister die, before any of the terms come, that year wherein he dies, the executor will get no annat, but that whole year's stipend, and no further.

No 1.  
The annat found to extend to a whole year more than the defunct had right to *proprio jure*.

Act. Stuart.

Clerk. Hay.

Fol. Dic. v. 1. p. 35. Durie, p. 446.

1661. July 26.

WILLIAM KER *against* PARISHIONERS OF CARDINE.

WILLIAM KER, as executor, confirmed to umquhile Mr Andrew Ker, his father, pursues the minister and parishioners of Cardine, for intronning with his father's stipend of the kirk of Cardine, in anno 1652 and 1653, and for the annatine 1654; because his father died on the 22d. of November 1653.—The defenders *alleged* absolvitor, Because he being colleague minister, placed with the defunct's consent, and the defunct being suspended by the presbytery, he got right to these years stipends, and obtained decret against the heritors, and uplifted conform; and so was *bona fide* possessor *cum titulo*. 2do, He offered him to prove, by an act of presbytery, that at the time of his entry, he was provided to 800 merks of

No 2.  
Found to extend only to half a year.

No 2. the defunct's stipend, by the defunct's own consent. And as for the annat, it was not confirmed, and could be extended to no more but the half of 1654.— The pursuer answered to the first, That the presbytery had no power to dispose of that stipend, by the act of Parliament 1644, because the defunct was only suspended *ab officio*; which makes not the kirk vaick, *maxime* seeing the defunct was reponed by the synod, and never deposed; and as to the decret at the defender's instance, it was given without calling the defunct, whom he was *in mala fide* to misken. To the second, That the act of presbytery cannot prove, unless it had been subscribed by the defunct's own hand, matters of stipend not being the proper work of presbyteries, but proper for civil judges, especially, seeing the defunct was suspended for preaching for the engagement 1648: Against which that presbytery protested; and so the act being *Eairtefter*, is the more suspected. To the third, The annat not being *in bonis defuncti*, but indulged by the law, to the wife, bairns, and nearest of kin to the defunct minister, and so originally their right, though upon occasion of his service, the same needs no confirmation; and the defunct having right *proprio jure* to the whole year 1653: Surviving both terms annat, signifying a year further, must be the whole year 1654.

THE LORDS repelled the first defence, and found the suspension of the minister not to make the stipend vacant; and had no respect to the said decret, wheretq the defunct was not called. They found also the second defence not probable by the act of presbytery; and found that the annat needed no confirmation; but that the annat did only extend to half a year more than the defunct had right to *proprio jure*.

*Fol. Dic. v. 1. p. 35. Stair, v. 1. p. 57.*

1662. July

MR PATRICK WEMYSS *against* PARISHIONERS OF LASSWADE.

IN a process betwixt Mr Patrick Wemyss and the Parishioners of Lasswade— THE LORDS found, That a minister dying in January, the following year's stipend is due to his executors as annat. This being the practice formerly, yet now being doubted, it was thus decided.

*Gilmour, No 50. p. 36.*

No 3.  
Annat found  
to extend to  
the whole  
year.

\* \* This matter was afterwards regulated by the following act of Parliament:  
' The King's Majesty judging it necessary for the good of the church, that  
' such a stated and equal course be taken for clearing and securing the ann due  
' to the executors of deceased bishops, beneficed persons, and stipendiary mi-  
' nisters, as may be suitable to the interest of the executors, and no discourag-  
' ment or hindrance to the planting of the vacant benefices; doth, therefore,  
' with advice and consent of his Estates of Parliament, statute and ordain, that  
' in all cases hereafter, the ann shall be an half year's rent of the benefice or  
' stipend, over and above what is due to the defunct for his incumbency, which