

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*.

Fal. 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 discouragement
' 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

' 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.