

Crombie, That he being infeft in annualrent, clad with possession ; in so far as, after the term of payment, he had got security from the common debtor, stating the same in a principal sum, before Captain Hay, who had acquired possession upon his right.

It was ALLEGED, That, unless the annualrent had been paid upon a decreet against the tenants for poiding the ground, any bond, granted by the common debtor, could not make Crombie's right a public right by possession.

The Lords did prefer Crombie ; and found that the debtor himself might pay an annualrent without a decreet ; or give bond therefor, making up annualrent in principal sum, bearing annualrent ; which will make the base right clad with possession, and so preferable to any posterior right.

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1675. July 9. MR ROBERT BIRNIE and JAMES HAMILTOUN *against* WILLIAM LOCKHART of CARSTAIRS.

THE said Mr Robert and James Hamiltoun, as executors to Mr John Lindsay, minister at Carstairs, having pursued William Lockhart for the stipend due to the said Mr John for the crop 1672 ;—it was ALLEGED, That they could only have right to the half of that year's stipend ; because the defunct died in March 1672 ; and, by the late Act of Parliament anent ministers' anns, it is provided, That, if the incumbent survive Whitsunday, his executors should have the half of that year's stipend, and the other half for the ann ; so that he, having died before Whitsunday, the pursuer can only have right to half of the stipend for an ann ; especially the Act of Parliament being made for that same year 1672, and is *declaratorie juris* ; there never having been an Act of Parliament before, determining that case.

It was REPLIED, That, before that Act of Parliament, by the constant custom and practice of this kingdom, an incumbent dying after the 1st of January had right to the half of the stipend as minister, and his executors to the other half as ann ; and the late Act of Parliament could be no ground, seeing it is posterior not only to the death of the last incumbent, but to the term of payment.

The Lords found, That the Act of Parliament could only have respect *ad futura sed non ad præterita*, and that the ancient custom and practick ought to regulate this case ; and that the Act of Parliament was not *declaratorie juris antiqui*, but clear contrary ; and indeed, the Estate of Bishops having brought in this act, it was carried contrary to the opinion of severals, and mine own, as being prejudicial to ministers' relicts and children.

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1675. July 13. ACT of SEDERUNT anent Bills of Suspension and Liberation of Prisoners for Debt.

THERE being a bill reported to the Lords, by the Ordinary, bearing not only suspension, but a warrant to set at liberty a prisoner for debt, upon a reason of