1675. *July* 21.

The ARCHBISHOP of GLASGOW *against* The late ARCHBISHOP.

No. 30.
Found, that a beneficed person demitting before the legal term, can have no right, but to the preceding term; though if he had died in possession, his representatives would have had right to the following half year as annat.

In a double-poinding raised at the instance of the feuers of the barony of Glasgow against the Archbishops, as being charged by them both for the feu-duties of their lands 1674, it was alleged for the late Archbishop, Leighton, That he ought to be preferred for the half of that year's duty, from Whitsunday to Martinmas, because, albeit he did demit his place before Michaelmas, yet he continued in the exercise of the function until within a few days before the term of Michaelmas; *et in beneficialibus terminus inceptus pro completo habetur*; 2*do*, He is *in pari* or *fortiori casu* than that of an ann due to the executors of an incumbent beneficed person, who, by act of Parliament, have right to the subsequent half year's term due to them as an annat, if the defunct to whom they are executors had died before the term of Michaelmas. It was alleged for the present Archbishop, Burnet, That he ought to be preferred, because, by the demission of the late Archbishop, the benefice became void, and the rents of the benefice did belong to the King, who had only power to present; and his Majesty accordingly, by his patent and signature, having expressly disponed the rents of the bishoprick for that half year in question, the late Archbishop having demitted, as said is, before the term of Michaelmas, can pretend no right. And as to the *second* argument, it is of no weight, the case of demission being far different from that of an annat, which is given by law as *triste lucrum*, out of compassion to the nearest of kin to the defunct who was incumbent, which reason ceases as to the granter of the demission, which is not at all favourable. The Lords did prefer the present Archbishop, and found, That a beneficed person making a voluntary demission can have no right but to the term's duty prior to the demission; and that the King having right thereto, and disponing the same to the present Archbishop, he ought to be preferred: As likewise found, That there was a great difference betwixt the case of an annat and voluntary demission; that the law and act of Parliament, which is special as to the ann due to the nearest of kin, could not be extended to the case of demission, which could only be done by an act of Parliament; neither was there *paritas rationis*.

Gosford MS. No. 788. *p.* 495.

1676. *January* 18.

The COLLEGE of ABERDEEN *against* HERITORS of RATHEN.

No. 31.
A stipend found due to an incumbent who was transported

The College of Aberdeen having a gift of vacancies within that diocese, charges the Heritors of Rathen for the vacant stipend crop 1667. They suspend on this reason, that they had paid *bona fide* to Bishop Scrogie, who was their Minister at that time, and who served the cure till Lambmas 1667. It was answered, That

No. 31.
at Lambmas for one term that year.

they could not pretend payment *bona fide*, because the Bishop was consecrated before Whitsunday, and so ceased to be Minister of that parish; 2*do*, Though he served till Lambmas, because the legal terms of stipends are Whitsunday and Michaelmas, or the sowing and separation, so that a Minister transported before Michaelmas, can have but the half year, which by the late act of Parliament is now so ordered in anns, which formerly had the privilege *quod annus ceptus habetur pro completo*, which was never so in the transportation of Ministers.

The Lords found, that the Bishop having served the cure till Whitsunday, the heritors were *in bona fide* to pay him for his incumbency only one term, he not having served till Michaelmas.

Stair, *v.* 2. *p.* 401.

1676. *July* 6. The BISHOP of EDINBURGH *against* WISHART.

No. 32.
Found relative to quots of testaments, in conformity with No. 29. p. 15895.

There being mutual declarations betwixt the Bishop of Edinburgh and the executors of the late Bishop, which of them had best right to the quots of testaments, confirmed after the death of the late Bishop; it was alleged for the executors of the late Bishop, That the quots of all testaments of defuncts, who died during the life of the said Bishop, or during the space of his annat, falls to his executors, because it is a part of the benefice, and as a liferent-escheat, or other casuality of the Bishop's vassals falling within his life, or his ann, albeit neither gifted nor declared, would belong to his executors, so much more the quots of testaments, of all who died within his ann, whenever they shall happen to be confirmed. It was alleged for the incumbent, That the quots of testaments were but a casuality, and no part of the yearly revenue of the Bishoprick, and are due for confirmation, which is an act of jurisdiction, and the executors, can have no jurisdiction; but all confirmations after the Bishop's death, are done by the authority of the incumbent; and as a composition to enter an appriser, or the *duplicando* for entering of an heir could not be due to the executors, but to the incumbent, who can only confirm, or receive, so neither can the quots of any testaments, but such as were confirmed during the defunct's life. And if the being confirmable were the rule, it would make the Bishops interfere, and to be in continual debate for quots, for twenty or thirty years, upon the account of the time of the defunct's death. It was answered, That the case is not alike, as in receiving vassals, which can only be done by the Bishop himself; but testaments are confirmed by the commissaries, without mention of the Bishop, who remains to officiate, both in the life of the defunct, and the incumbent, and therefore may be countable to both, as to all that died in the time of either.

The Lords considering that this case hath never been determined, resolved to clear the interest of defuncts, and incumbent Bishops so, as might occasion the least debate betwixt them; and found, that their interest should not be ruled by the death of persons, or their testaments being confirmable, or by any edict, charge,