

No 8.

excludes his nearest of kin.—It was *answered*, That the annat being a favour to the successors of beneficed persons, though it need no confirmation, yet it must belong to the nearest of kin, as well as to the wife, which is cleared by the late act of Parliament 1669, anent annats, declaring them to belong to executors without confirmation; therefore the executors can only be accountable to the wife for the half, when there are no children.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 36. Stair, v. 2. p. 678.

1665. July 6.

MR JOHN COLVILL Advocate, *against* The LORD BALMERINO.

No 9.
There being
no wife or
children, the
annat belongs
to the nearest
in kin.

MR JOHN COLVILL advocate, as executor to umquhile Mr John Colvill, minister at Kirknewton, pursues the Lord Balmerino and others, for payment to him, as executor foresaid, of the stipend due to the said umquhile Mr John, for certain years bygone, alleged resting owing, Mr John having died in February 1663.—It was *excepted*, No process for that year's stipend, because it was paid to the in-trant minister, and was presented and admitted to the said kirk for the crop 1663; and the last incumbent having died before the term of payment, nothing could belong to the defunct, but what was *in bonis defuncti*.—It was *replied*, The executor pursued for the same, albeit the term was not come, as annat.—To which *duplicated*, That the executor could not crave the annat, the same being truly due to wife and bairns; *ita est* the defunct Mr John Colvill had neither.—THE LORDS found, That the nearest of kin have right to the annat, albeit the defunct have neither wife nor bairns. And there being a question as to the glebe, the defunct having died in February, to whom the crop thereon should belong; the LORDS found likewise, That the nearest of kin had right thereto, they always proving that the defunct had sown the same before his decease. (*See* No 5. the same case.)

Fol. Dic. v. 1. p. 36. Newbyth, MS. p. 32.

1709. February 8.

REPRESENTATIVES of Sheils *against* The TOWN of ST ANDREWS.

No 10.
All stipendi-
ary ministers
are compre-
hended under
the act of
Parliament,
whether they
be paid out of
tithes or
otherwise.

JOHN SHEILS, brother and executor to Mr Alexander Sheils, minister at St Andrews, who died in our colony of Darien, in 1700, pursues the Earl of Crawford, as provost, and the other magistrates of that town, for payment of the annat due for the half year after his incumbency, by the act of Parliament 1672, regulating the periods of its falling due.—*Alleged*, This gratuity introduced by law in favours of ministers, relicts, and children, left commonly poor, has only place where the stipend is payable out of the teinds, but in burghs royal, they

are either paid by contribution, or out of their common good, the burgh affording no tithes; and so has Carpzovius decided, cap. 8. *de decimis*, that annats are *debita fructuum* only; and it is known, that the ministers of Edinburgh, and many other burghs royal, have no annats, neither did menial kirks pay any; and by the same rules St Andrews must be free.—*Answered*, The act is general, and does not except burghs more than others; and *ubi lex non distinguit nec nos*. And though Edinburgh and other towns have not paid any such acknowledgment to their ministers, yet they redeem it by giving some equivalent for it, and prudently waved its being brought to a trial. And it is known, that royal burghs having a laudward parish annexed to them, have ever been in use to pay the annat; and though there grows no corns within burghs to be teindable, yet there is in most of them mortifications of teinds to help their stipends.—THE LORDS, by a plurality, found all stipendiary ministers included in the act, whether paid by money or victual, and therefore found annat due here.

Fok Dio. v. 1. p. 36. Fount. v. 2. p. 489.

* * The same case is thus stated by Forbes:

IN the action at the instance of John Shiels against the magistrates of St Andrews, THE LORDS found, That annat was due to the pursuer as nearest of kin to Mr Alexander Shiels, the defenders' late minister, albeit the defunct's stipend was not payable out of the tithes, but by contribution of the burgh, conform to an act of the town council; in respect the act of Parliament 1672, subjects all persons to the payment of annat, who are liable to pay stipend, without distinction of burghs royal; and the reason of the law, viz. Because ministers generally die poor, holds equally in stipendiary as in beneficed ministers.

Forbes, p. 321.

1747. June 9.

KATHARINE HUTCHISON, Relict of the deceased Mr Mathew Wood, one of the Ministers of Edinburgh, and Others, his nearest in kin, *against* The MAGISTRATES and TOWN COUNCIL of Edinburgh.

MR MATHEW WOOD, one of the ministers of Edinburgh, having died between the terms of Michaelmas and Martinmas 1741, Katharine Hutchison his relict, and others his nearest in kin, pursued the Magistrates and Town Council of Edinburgh, for the half year's stipend due at Whitfunday 1742, as the annat.

Alleged for the defenders, *imo*, That where stipends are not payable out of tithes, but as in the case of ministers within burgh, are made up by contribution, or out of the funds of the burgh, as the annuity and seat rents within the city of Edinburgh, no annat is at all due. *2do*, That by the several acts of the Town Council, settling the ministers stipends at the rates therein-mentioned, the

NO IT:
Annat takes place, although the stipend be not paid out of tithes. How computed.