

1662. July 5.

The EXECUTORS Mr JAMES FAIRLY, Minister of Lefwald, *against* The PARISHIONERS.

## No 16.

The minister having died in February, the ann found to extend over that whole year.

THE EXECUTORS of Mr James Fairly having obtained a decret, before the Commissaries, against the parishioners, for the ann, as being the hail year, 1658; in respect the minister died in February in the year 1658. The decret was suspended, on this reason, that the ann could only be half a year; seeing the minister died before the sowing of the crop, or Whitfunday; because, if a minister serve after Whitfunday, he has the half of that year's stipend, albeit he be transported, or deposed; otherwise, if a minister should serve the whole year till Michaelmas day, and then be transported or deposed, he should get nothing; so that the ann being half a year's stipend more than the minister served for, he having only survived till Michaelmas 1657, has only the right to the Michaelmas *proprio jure*, and a half year thereafter, as the ann.—The charger *answered*; That, in teinds and stipends, there are not two terms, but Michaelmas for all; and therefore, if the incumbent be deposed or transported before Michaelmas, he has nothing that year; but if he die after Michaelmas, any time before the beginning of the next year, *proprio jure* he has the year he died in; and the half of the next, as his ann; but if he live till January in the year ensuing, he has that whole year as his ann:

Which the LORDS found relevat; and therefore the LORDS found the letters orderly proceeded.

*Stair, v. 1. p. 121.*

\*.\* Under the case, Colonel Henderfon's Bairns *against* Debtors, 9th December 1623. Durie, p. 88. recorded under the head FOREIGN of this Dictionary, there is the following notandum relative to the annat:—Annat of benefices pertains to the executors of the defunct, and may be evicted for the deceased beneficed person his debts, by his creditors, albeit it useth not to be confirmed, nor comes under the defunct's testament; sikklike the minister's satisfaction for reparation of the manse, which is paid by the next intrant, pays the defunct's debt, albeit usually it be not confirmed. Durie, p. 89.

See Sheils *against* Parishioners of West-Calder, 26th January 1670, *Stair v. 1.* p. 663.—*Voce* PERSONAL OBJECTION.

See Wishart *against* the Bishop of Edinburgh, 26th November 1674, *Stair, v. 2.* p. 286.—*Voce* KIRK PATRIMONY.

See Executors of the Bishop of Edinburgh, 12th November 1674, Dirleton, p. 83. *Voce* TERM LEGAL and CONVENTIONAL.

See Colvil *against* Balmerino (Nos 5. and 9.), as reported by President Gilmour<sup>d</sup> p. 113.—*Voce* EXECUTOR.