

No 11. ving survived Michaelmas 1741, though he died before Martinmas, the term appointed by these acts of council for payment of the ministers' stipends, he was entitled to that whole year's stipend for his incumbency, and that the pursuers were entitled to the half year's stipend that was payable at Whitsunday 1742, for the annat.' On bill and answers the LORDS 'adhered.'

D. Falconer, v. 1. p. 245.

1628. February 28. BAIRNS of the B. Galloway *against* COUPER.

No 12.

Whether the annat can be affected by the minister's debts or obligations.

IN an action of tutor counts betwixt the Bairns of the Bishop of Galloway and Andrew Couper their tutor, an article of defalcation of the charge being given in by the tutor, whereby he craved allowance of a pension given to him by the Bishop, during his lifetime, to be allowed to him particularly of that year after the Bishop's decease, the annat whereof pertained to his relict and bairns, conform to the ordinance of the kirk, which provides the fruits of the benefice for the year, after the late incumbent's decease, to pertain to his wife and bairns, and therefore the tutor craved the pension of that year to be allowed to him;— and the minors *alleging*, That the pension lasting only for the giver's lifetime, could not extend to that year:—THE LORDS allowed of the article of defalcation, and found, That the tutor ought to have that year's pension allowed to him, in his intromission with the minors' goods.

Clerk, *Hay.*

Fol. Dic. v. 1. p. 36. Durie, p. 351.

1686. March 18. ALEXANDER *against* CUNNINGHAM.

No 13.
Annat found to belong, *proprio jure*, to nearest in kin, not to an assignee.

THE case of Gilbert Alexander *contra* Cunningham, was reported by Harcarfe. A minister having no children, assigns his annat to his brother's son; his sister competes as nearest of kin, and *alleges* it was not the defunct's, but being given in the time of Popery, when churchmen were neither allowed wives nor children, it belonged to the nearest of kin.—THE LORDS found it belonged to the minister's nearest of kin, and not to his assignee.

Fol. Dic. v. 1. p. 36. Fount. v. 1. p. 408.

* * Harcarfe thus states the same case :

IN a competition for a minister's annat, who left neither wife nor child, betwixt his nearest of kin and a remote relation to whom he had legated the same :

Alleged for the nearest of kin : That the annat was not *in bonis defuncti*, but designed by way of charity to the relict and nearest of kin ; in prejudice of whom it could not be disposed of by the defunct, or affected for his debt.

Answered: By the act 13. Sess. 3. Parl. 2. Charles I. the annat is mentioned as due to the minister and his executors, and so it is at his disposal.

Replied: The said act 13. clears only what is the annat, and not whom it is due to; and by the act of Parliament 1647, it is due to the nearest of kin: And though the act 13. mentions executors, that is upon supposition that the nearest of kin are executors.

THE LORDS found the annat to be due to the nearest of kin, and preferred him to the legator.

Harcarse, (MINISTERS.) No 695. p. 196.

1694. February 20. DONALDSON against DOCTOR BROWN of Dolphington.

THE LORDS found the patron's gifting a second stipend to the last minister's widow and children, was a pious use contained within the act of Parliament, if they dwelt in the parish at the time: And found they would not take cognition in what case the manse was at the minister's entry in 1664, so as to burden his executors after 29 years silence, though the legal prescription in these cases is only 40 years: And found the annat was a legal gratuity that could not be burdened with the minister's debt, not being *in bonis defuncti*. (See MANSE.)

Fol. Dic. v. 1. p. 36. Fountainhall, v. 1. p. 611.

1673. July 16. KER against the PARISHIONERS of Morumside.

ISOBEL KER pursues the parishioners of Morumside for the annat of her husband's stipend for the whole year in which he died, having died in April.—The defendes *alleged* no process till the annat were confirmed, because it would belong to the minister's executors, and be subject to his moveable debt.—It was *answered*, That the annat being due after the minister's death, was not *in bonis defuncti*, but was granted to his nearest friends *ex gratia*; and whatsoever might be alleged by creditors, it did require confirmation.

THE LORDS found no necessity of confirmation of the annat.

Fol. Dic. v. 1. p. 36. Stair, v. 2. p. 215.

* * This was found likewise, in the case, Ker against the Parishioners of Cardine, No 2.

No 13.

No 14.

Annat is a legal gratuity, not *in bonis defuncti*, or affectable by the minister's debts.

No 15.

The right of the widow, children, and nearest of kin, to the annat, needs not confirmation.