were no children, and annat being in favours of the wife and children, the neareſt of kin could have no part thereof.—The defenders *anſwered*, That the annat was introduced the time of Popery, when the (clergy) had no wife nor bairns, and ſo did ſtill moſt properly belong to the neareſt of kin, who would get it, if there were neither wife nor bairns.

No 7.
neareſt in kin, where there are no children.

The Lords found the annat to divide betwixt the purſuer and the neareſt of kin.

The purſuer inſiſted next, and *alleged*, That a bond bearing clauſes of annualrent and obligement to infeſt, behoved either to give a right to the half of the ſtock, or elſe to a terce of the annualrents.

The Lords found the clauſes of annualrent and deſtination, to exclude her from the ſtock as heritor; and the want of infeftment to exclude her from the terce of annualrent.

The purſuer inſiſted in the next place, and produced a bond granted by her father to her huſband; and here the longeſt liver of them two, and the heirs procreate betwixt them, without any addition or termination, failing theſe heirs, and without clauſes of annualrents or infeftment; and therefore ſhe claimed the whole ſum as being the longeſt liver.—It was *anſwered*, That this bond did not conſtitute in her only a liferent, according to the ordinary conception and interpretation of that clauſe, the longeſt liver of them two betwixt man and wife; but eſpecially, heirs procreate betwixt them being mentioned, which behoved to be the man's heirs, who, if they had exiſted, would have had right as heirs to their father, not to their mother; and therefore the father behoved to be fiar, and the mother only liferenter.—It was further *alleged*, That beſide the liferent, the purſuer behoved to have right to the half of the ſtock; becauſe the ſum being moveable, albeit the tenor of the bond made it payable to the relict for her liferent uſe, yet ſhe behoved to employ it ſo, as the ſtock would remain; which ſtock would ſtill be diviſible betwixt the relict and the neareſt of kin, as being moveable.

The Lords found, That the purſuer might take her choice of the liferent, or of the half of the ſum, but would not allow her both. (*See* Heritable and Moveable.)

Fol. Dic. v. 1. *p.* 36. *Stair, v.* 1. *p.* 194.

1679. *January* 22. Spence and Clerk *against* Craig.

No 8.
Found as above.

James Spence and John Clerk, as aſſignees by the legatars of Mr John Louthian, having purſued Beatrix Craig, his relict, as executrix, and thereupon a count and reckoning being appointed, the relict having confirmed the annat of her huſband, ſhe *alleged*, That ſhe had the ſole right thereto, in reſpect there were no children, and the annat not being *in bonis defuncti*, nor due to the defunct for his ſervice, but a privilege indulged by law in favours of his neareſt relations, needs no confirmation, and if he have no bairns, all belongs to his wife, which

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 intrant 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 *duplied*, 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 stipendiary ministers are comprehended 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