STYLE, OLD AND NEW.

1757. *June* 25.

WALTER ANDERSON *against* The EXECUTORS of GEORGE HOME.

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A Minister who had been ordained to his church during the observance of the old style, died posterior to the statute enacting the alteration. His death was posterior to Michaelmas by the new style, but prior to that term by the old style. In a question between his executors and his suecessor in the benefice, the Lords found that the stipend must be regulated by the old style, and consequently that the new incumbent was entitled to the half-year's stipend which the deceased would have drawn had he survived Michaelmas.

GEORGE Home had been ordained Minister of Chirnside prior to the late statute for correcting the calendar. He died on the 5th of October, 1755.

On the 13th of May, 1756, Walter Anderson was ordained Minister of the parish.

The executors of George Home claimed, in terms of the act 13. 1672, the whole year's stipend due for the crop and year 1755, by virtue of his incumbency, and the one half of the stipend due for crop 1756, as falling under the ann; in respect George Home had survived the term of Michaelmas 1755 New Style.

Walter Anderson alleged, he had a right to that part of the stipend of crop 1756, in respect George Home had not survived the term of Michaelmas, Old Style; and therefore had right, by his incumbency, to the half only of the stipend due for crop 1755; and that the other half was to be considered as the ann.

The question was, Whether the determination of a Minister's stipend, who had been settled previous to the alteration of the Style, is to be regulated by the New or the Old Style?

Pleaded for Anderson, The act for correcting the calendar enacts, "That nothing in this act contained shall extend, or be construed to extend, to accelerate or anticipate the time of payment of any rent or rents, annuity or annuities, or sum or sums of money whatsoever, which shall become payable by virtue and in consequence of any custom, usage, lease, deed, writing, bond, note, contract, or other agreement whatsoever, now subsisting, or which shall be made, signed, sealed, or entered into, at any time before the said 14th of September, or which shall become payable by virtue of any act or acts of Parliament now in force, or which shall be made before the said 14th of September, or the time of doing any matter or thing directed or required by any such act; or to accelerate the payment of, or increase the interest of any such sum of money, which shall become payable as aforesaid; or to accelerate the time of delivery of any goods, merchandises, or other things whatsoever; or the time of the commencement, expiration, or determination of any lease, &c. or of any other contract or agreement whatsoever; or the time of attaining of the age of twenty-one years, or any other age requisite by any law, usage, custom, &c. for doing any act, or for any other pur-

No. 1. pose whatsoever, by any person or persons now born, or who shall be born before the said 14th of September;—but that all and sundry the premises shall commence, cease, and determine, at and upon the same respective natural days and times as would have happened in case this act had not been made." Now, if Mr. Home's survivance of the new legal term of Michaelmas was to give his executors a right to the stipend in question, this would be to anticipate and accelerate the term of payment; seeing, that if the statute had not been made, his executors could not have drawn that stipend, unless he had survived the old term of Michaelmas. The claim of the heirs is for an acceleration and anticipation of payment; it is a demand of a sum, which plainly could not have been asked if the Style had not been sltered; and cannot be due from the accident of that alteration, when the statute itself provides, that no anticipation of payment shall therefrom arise.

Answered for the executors, The Style-act for regulating the commencement of the year, and correcting the calendar, then in use, proceeds upon a recital, "That the Julian calendar, then in use throughout the British dominions, had been discovered to be erroneous; by means whereof the vernal equinox, which, at the time of the council of Nice, in the year 325, happened on the 21st of March, now happens on the 9th or 10th of that month; and the said error is still increasing, and, if not remedied, would, in process of time, occasion the several equinoxes and solstices to fall at very different times, in the civil year, from what they formerly did, which might tend to mislead persons ignorant of said alteration." And, after observing, that most other nations in Europe had already corrected this error in the calendar, and that it would be of general convenience to merchants, and all persons who correspond with other nations, and tend to prevent mistakes and disputes, the statute enacts, "That the next day after the 2d September, 1752, shall be accounted the 14th September; and that the several natural days which follow the 14th September, shall be reckoned and numbered forward, in numerical order, from the said 14th September, according to the order and succession of days used in the calendar." And as the festivals, both fixed and moveable, are declared to be regulated according to the new computation; so, in particular, the feast and term of Whitsunday, which gives occasion to the present question, is declared, by the new calendar, which is subjoined to and confirmed by the act, to be the 15th of May, according to the computation enacted by the statute:—The statute fixes the different terms, as they are now established, and repeals the old ones. So that the act in question, fixing certain precise, general, legal terms, to come in place of the former ones, the right of heirs and executors is now to be determined by their predecessor's survivance of these general legal terms, and not by his survivance of the exploded ones. The intention of the statute was, to correct the errors of the former computation, to bring us into a conformity with other nations, and to prevent mistakes and disputes in time coming, The interpretation contended for by the charger, would, on the contrary, make us relapse into those errors, make our practice disconform

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to that of other nations, and create mistakes and disputes in time coming. It would etablish the authenticity of that term which it meant to repeal; it would create two Styles, where it meant to establish one; and it would become a source of various disputes and controversies, in every case that should occur from time to time, whether the one or the other of the legal terms should be most applicable to it.

Upon this plan, questions of succession and of legal diligence are determined. When a proprietor of land dies, the law divides the property of his estate betwixt his heirs and executors, according to the legal terms of Whitsunday and Martinmas, as they are now ascertained; so that if he survives the first, his executors have a right to a half of the rent due for the crop; and if he survives Martinmas, as now ascertained, they have a right to the whole.—Upon the same plan, when a man leaves a wife, who is not provided by contract of marriage or other deed, who is therefore entitled to be served to a terce; if he dies upon the 20th May, in any year since 1752, the terce will only entitle her to the half of the rents payable for that crop, and the other half belongs to her husband's executors, because he survived the legal term of Whitsunday; though, if he had happened to die upon the same natural day in any year before the statute took place, as the present 20th of May was then computed the 9th, his executors would have had no right to any part of the crop of that year, but the whole payable for that crop would have been divided betwixt the heir and the tercer. And, for the same reason, when a husband dies upon the 20th of May, since 1752, his relict will be entitled to be alimented in the family, down to the term of Martinmas, when her right by the terce commences; though, if he had died upon the same natural day before the act, she would have been alimented only for six days, because, at that period, she was entitled to the rent of the lands, which are understood to be due at Whitsunday; and her executors would have drawn them, though she had died next day, before they were paid, or even before they were payable by the conventional terms betwixt the heritor and the tenant. And the same rule takes place, in case a married woman, who is proprietor of lands, should decease upon the 20th of May, or upon any other of these disputed days, the *courtesy* would take place only from the subsequent term of Martinmas, although it would have taken place at Whitsunday, if she had died before the year 1752. Or, if the courtesy is excluded, either by paction or by a tailzie, or because there were no children born of the marriage, then the wife's heir will enter to the lands at the Martinmas after her death, and the husband will have right to the first half of that year's rent, though he could have taken no part of it if she had died upon the same natural day in any year before the act.

The same analogy affects the rule with respect to legal diligences. In these, the profits of lands, or any other subject, are divided betwixt different parties, according to the legal terms. Thus, if an adjudication is led upon the 20th of May since the act, the adjudger will only have right to the half of the rent payable for that crop, and the other half must be affected by arrestments; though

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With respect to the difficulty occuring from the acceleration of payment, that difficulty only arises from not distinguishing betwixt the conventional and the legal terms of payment. Even the act 13. of 1672, which fixed the rights of the different successors of Ministers, speaks nothing of the conventional terms of payment, which vary according to usage, or the nature of the subject in which the stipend is payble: As for example, if it is payable in victual, it cannot be paid either at Whitsunday or Michaelmas, but betwixt Yule and Candlemas, at it is only during such period that such rent can be paid; but those terms as which *dies venit*, or payment may be exacted, are independent of the legal terms at which *dies cedit*, or the right is vested. And in the same manner, the statute in question leaves the conventional terms upon their own footing, bars the accelerating payment to the prejudice of them, and leaves the day as it was when payment may be exacted; although it makes *diem cedere*, or the right to vest, according to the general legal term, which is to be the rule as to the vesting of rights in all time coming.

To illustrate this, let the following example suffice: Suppose that, before the statute, the rents of an estate were all payable by the tenants' tacks at the legal term of Whitsunday or Martinmas, as the term then stood, the effect of this saving clause would be, to supersede the payment during the subsistence of these tacks, to the 26th of May, and 22d of November, that the tenants might not be hurt by the acceleration of the term of payment, before the expiration of the full number of natural days stipulated by their leases. But surely this could have no effect upon the division of the rents betwixt the heir and executor of the proprietor of such lands deceasing after the act, or upon the commencement of the terce or courtesy falling upon decease: All these rights must be decided by the legal terms, at whatever distance the conventional had been originally from them; the saving clause did not affect the right vested by the legal term, and consequently, the superseding the demand of payment cannot anywise affect the present question. The exception was introduced merely in favour of the debtor, merely that his term of payment might not be accelerated; but by no means to affect the rights of third parties, who had no title to claim under the exception.

"The Lords found, That Mr. Home, the late incumbent, having died before Michaelmas, 1756, according to the old computation, had no right to the last year's stipend for that year, but that the same does belong to his nearest of kin as ann; and that Mr. Anderson having been entered before Whitsunday, 1756, according to the same computation, has right to the first half-year's stipend, payable for crop 1756."

Act. *Brown, Ferguson.* Alt. *W. Pringle, Lockhart.*

J. D. *Fol. Dic. v. 4. p. 302. Fac. Coll. No. 30. p. 51.*

*** Lord Kames reports this case:

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Mr. George Home, Minister at Chirnside, died the 5th of October, 1755, which by the Old Style, was 24th of September, 1755; and the point controverted betwixt his representatives and the present incumbent, was, Whether the deceased had right to the whole stipend due out of crop 1755? This resolved into the following question, Whether the Michaelmas, which separates the interest of the incumbent Minister from that of the former, is the Michaelmas according to the old style, or according to the new? This question will always occur, where a Minister survives Michaelmas new stile, and dies before Michaelmas old style.

It is evident, that the alteration of the style has no effect but to bring on our legal terms eleven days more early than of old. Michaelmas, particularly, is the 29th of September as formerly; and as the statute does not introduce two Michaelmases more than two Whitsundays or two Martinmases, the representatives of the former incumbent who survived Michaelmas, are entitled to the whole stipend of that year.

The present incumbent resorted to a clause in the act introducing the new style, declaring, "That nothing in this present act shall extend to accelerate, or anticipate the time of payment of any rent, annuity, or sum of money, which shall become payable by virtue of any cause subsisting before the 14th of September, 1752." But it was obvious to answer, that this clause concerns only the payment of debt; and a rational exception it is, for it would be gross injustice to oblige a man to pay a debt more early than he is bound by engagement.

The present case has no relation to the payment of debt, but to ascertain the rights of parties in a competition. As Mr. Home survived Michaelmas, his representatives are entitled to the whole stipend of that year, which is perfectly agreeable to the statute. Were they indeed demanding payment from the heritors before the term covenanted, the clause mentioned would stand in their way.

In a word, the matter comes out thus: By the Minister's surviving *dies credit* of his stipend, *etsi dies non venerit solutionis*. And the case here is precisely the same with that betwixt the heir and executor. If a proprietor of land survive Whitsunday, his executor has right to the half of the rent payable for that crop; though by the terms of the tacks set to his tenants, that rent may not be payable for a twelvemonth.

It carried, however, by a scrimp plurality, that Michaelmas old stile must be the rule in this case; a judgment which could not stand. And accordingly, in the very next case that came before the Court.

Sel. Dec. No. 129. *p.* 185.