

1675. July 21.

The ARCHBISHOP of GLASGOW *against* The late ARCHBISHOP.

In a double-poinding raised at the instance of the feuers of the barony of Glasgow against the Archbishops, as being charged by them both for the feu-duties of their lands 1674, it was alleged for the late Archbishop, Leighton, That he ought to be preferred for the half of that year's duty, from Whitsunday to Martinmas, because, albeit he did demit his place before Michaelmas, yet he continued in the exercise of the function until within a few days before the term of Michaelmas; *et in beneficialibus terminus inceptus pro completo habetur*; 2do, He is *in pari* or *fortiori casu* than that of an ann due to the executors of an incumbent beneficed person, who, by act of Parliament, have right to the subsequent half year's term due to them as an annat, if the defunct to whom they are executors had died before the term of Michaelmas. It was alleged for the present Archbishop, Burnet, That he ought to be preferred, because, by the demission of the late Archbishop, the benefice became void, and the rents of the benefice did belong to the King, who had only power to present; and his Majesty accordingly, by his patent and signature, having expressly disposed the rents of the bishoprick for that half year in question, the late Archbishop having demitted, as said is, before the term of Michaelmas, can pretend no right. And as to the *second* argument, it is of no weight, the case of demission being far different from that of an annat, which is given by law as *triste lucrum*, out of compassion to the nearest of kin to the defunct who was incumbent, which reason ceases as to the granter of the demission, which is not at all favourable. The Lords did prefer the present Archbishop, and found, That a beneficed person making a voluntary demission can have no right but to the term's duty prior to the demission; and that the King having right thereto, and disposing the same to the present Archbishop, he ought to be preferred: As likewise found, That there was a great difference betwixt the case of an annat and voluntary demission; that the law and act of Parliament, which is special as to the ann due to the nearest of kin, could not be extended to the case of demission, which could only be done by an act of Parliament; neither was there *paritas rationis*.

Gosford MS. No. 788. p. 495.

1676. January 18.

The COLLEGE of ABERDEEN *against* HERITORS of RATHEN.

The College of Aberdeen having a gift of vacancies within that diocese, charges the Heritors of Rathen for the vacant stipend crop 1667. They suspend on this reason, that they had paid *bona fide* to Bishop Scrogie, who was their Minister at that time, and who served the cure till Lambmas 1667. It was answered, That

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Found, that a beneficed person demitting before the legal term, can have no right, but to the preceding term; though if he had died in possession, his representatives would have had right to the following half year as annat.

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A stipend found due to an incumbent who was transported