

No 26.

chap and change glebes at their pleasure, they may disturb many of the parishes of the nation. *Answered* for the minister, That the law has appointed him a glebe for the maintenance of his family, which must be understood *cum effectu*, and the 118th act 1592, explains it sufficiently, ordaining the glebe to be of the best and most commodious land, lying most contiguous to the manse; will any man think that a glebe on a hill side, affording little more than the seed, at half a mile's distance from his manse, is the best and most commodious in the terms of the foresaid act of Parliament? and *esto*, the former ministers did not quarrel it, their neglect can neither prejudice the Church nor him; and there can be no danger in the preparative to give ministers sufficient glebes, that they may serve God chearfully, and do acts of charity and hospitality; and if the former glebe was so good as Walstoun calls it, then he has no loss by the excambion. THE LORDS found there could be no designation of a new glebe by the presbytery, till it had been first cognosced before a judge competent, that the first was insufficient; and that they were not empowered to change the glebe, that had been possessed past memory of man, by giving a new one; but if there were inconveniencies, the minister might pursue a declarator before the Lords to get them amended and repaired; and therefore they reduced this new designation of a glebe, reserving his legal remedies as accords of the law.

Fountainhall, v. 2. p. 547.

S E C T. VII.

Fuel and Pasturage.

1605. May 25.

NAIRN *against* TWEEDIE.

No 27.

FOUND that the minister may get pasturage and fuel in any commonty where the feuar has pasturage, but not within the feuar's pasturage.

Fol. Dic. v. 1. p. 353. Haddington.

* * * See this case, No 23. p. 5143.

1630. February 2.

HAMILTON *against* TWEEDIE.

No 28.

A minister found entitled, besides his four acres

A MINISTER being desired to remove from the soums grass due to the vicar lands, wherein — Tweedie the pursuer was infest, and the minister defending with his designation, whereby he had privilege of pasturage, seeing the whole

vicar-lands were twenty-six acres, and the minister had only four thereof designed; and so he ought to have pasturage, seeing the kirk-land had the pasturage of twelve souns grass. THE LORDS found, that albeit the minister bruicked four complete acres for his glebe, yet he ought also to have a part of the privilege of pasturage, which was due to the vicar's land, and wherein the vicar's feuar was infest; and therefore they found due to the minister the privilege of one horse grass for his travelling to presbyteries, and others his lawful business, and of two cows grass for his house and family; and that the pursuer had right to the rest, and that the minister should have no more.

Fol. Dic. v. i. p. 353. Durie, p. 489.

1769. February 28.

ARCHIBALD DUFF of Drummuir *against* MR ALEXANDER CHALMERS Minister of Cairney.

THE ministers of the parish of Cairney had, from time immemorial, enjoyed a servitude of casting peats in certain mosses, the property of the Duke of Gordon.

But, in 1767, the presbytery, upon a petition from Mr Chalmers the incumbent, setting forth that these mosses were exhausted, designed part of a moss belonging to Mr Duff of Drummuir, for the use of the petitioner and his successors, in all time coming.

This decree being brought under challenge by Mr Duff, it was *pleaded* for the minister, That the 165th act of Parliament 1593, which directs the extent of glebes, provides, 'That the saids glebes be designed with freedom of foggage, pasturage, fewall, faill, diffat, loning, free ischue and entry, and all other privileges and richtes, according to use and wont of auld.' And the act 1663, c. 21. enacts, 'That every minister have fewel, foggage, feal, and divots, according to the act of Parliament made in *anno* 1593.'

These statutes are express. The first ordains, that glebes be designed with freedom of fuel, &c. and the other, that every minister have that right. The power of designation is conferred upon presbyteries, in words as clear as those under which they are in the uninterrupted use of designing manses and glebes. Nor can that designation be limited to those parishes where the minister had already acquired a right of servitude by prescription; for, why make a law to vest in ministers what they already enjoyed? or, why oblige presbyteries to decree privileges already acquired? But, in whatever way the general point may be determined, the present decree of the presbytery must be good, since it is confessed, that the ministers of the parish of Cairney have been in the immemorial possession of a servitude of fuel.

No 28.
of glebe, to a horse and two cows grass out of the vicar's land next adjacent.

No 29.
Presbyteries cannot design moss for the use of a minister.