1680. *December* 1.

MUIR, Minister of Fraserburgh, *against* The HERITORS.

No 20.

THE LORDS found the 48th act, 3d Parl. James VI. conceived as well in favour of the heritors as the ministers, and therefore, if there be kirk-lands of the same holding near his manse, he must not pick and chuse, to design lands that lie remoter, because better.

Fol. Dic. v. 1. *p.* 351. *Fountainhall, MS.*

1698. *February* 12.

MR WILLIAM DUNCAN *against* The PARISHIONERS of Kilpatrick-Easter.

No 21.
A glebe cannot be designed out of temple lands.

IN a pursuit by Mr William Duncan against the parishioners of Kilpatrick-Easter, for making up the minister's glebe, and L. 20 yearly for his grass; the question arose, if temple-lands were kirk-lands in the sense of the act of Parliament, so as to bear a proportional burden with bishop's, parson's, and abbot's lands; and the LORDS remembered it had been several times decided they were not, being given to the Knights for defending the Temple of Jerusalem at first, and then Rhodes and Malta, and were secular lands. And I find it so decided in the Parliament of Paris in Antonius Bengæus, and Francis Pinzonius, their *tractates de beneficiis ecclasiasticis.*

Fol. Dic. v. 1. *p.* 352. *Fountainhall, v.* 1. *p.* 824.

1794. *June* 10.

The MINISTER of Kingsbarns *against* The Hon. HENRY ERSKINE, and Others.

No 22.
Temporal lands cannot be designed for a glebe in a parish in which there are church-lands, however distant they may be from the manse.

THE parish of Kingsbarns was in 1631 disjoined from the parish of Crail. A manse and offices were built for the Minister of the newly erected parish, but no glebe was designed for him.

The present incumbent having applied to the presbytery for the designation of a glebe, they assigned for this purpose four acres of temporal lands lying contiguous to his manse. There are church-lands in the parish, but the nearest of them are distant from the manse at least three quarters of a mile.

The proprietors of the temporal lands brought a suspension of the proceedings of the presbytery, in support of whose sentence the Minister

Pleaded; The object of the legislature in allotting a glebe to every minister of a country parish, was to provide him with all those articles in kind, which are requisite for the accommodation of his family; and to answer this end, the glebe should be in the immediate vicinity of the manse and offices. With this

view, the acts 1572, c. 48, and 1592, c. 118, declare, that the glebe shall be designed from land 'lying contigue or maist ewest' to the manse; and the act 1606, c. 7. that if there is no arable land near the manse, pasture land shall be given to the minister, rather than that he should be subjected to the hardship of having his glebe at a distance. No 22.

The act of convention 1644, c. 31, still more effectually provided for its adjacency. And from the act 1663, c. 21. it appears, that so much was it considered as a fixed point that the glebe should be near to the manse, that the legislature thought it necessary to adopt a regulation of the act of convention 1649, c. 45. exempting incorporated acres in towns from being designed for that purpose, upon the heritor's giving other lands nearest to the kirk.

In no statute is it said, that where there are church-lands in a parish, temporal lands cannot be designed. On the contrary, the act 1649, c. 45. expressly enacts in general terms, that where glebes are situated at an inconvenient distance, new ones shall be designed, within a quarter of a mile from the manse, without making any distinction between church and temporal lands; and although this statute, as well as the act 1644, c. 31, fell under the rescissory act in 1661, yet both were virtually renewed by the 1663, c. 21, where its words are nearly adopted. These acts of convention, accordingly, are held by all our lawyers to be still in force, and on this ground alone it has long been established, that where there are no church-lands in the parish, temporal lands may be designed, in terms of the act 1644.

It is no doubt true, that the acts 1572, c. 48. and 1593, c. 165, mention church-lands as those out of which glebes are to be designed, but the statutes founded on by the charger are of much later date. Besides, at the reformation, and recently after, it was sufficient for the legislature to declare, that glebes should be given out of church-lands, because, in the parishes then existing, there were generally plenty of such lands the most fertile in the parish. But, when in consequence of the various commissions appointed in the beginning of the last century, the old divisions of parishes were much altered, many new ones erected in which there were no church-lands at all, and in building churches and manses, the conveniency of the parishioners was more studied than that of the minister, (1621, c. 5,) the regulations of the subsequent statutes authorising the designation of temporal lands became necessary.

Were the doctrine of the suspender well founded, it would follow, that if there were only four acres of church-lands in the parish, and each at a distance from the rest, the charger must take them as his glebe, which surely could never be the intention of the legislature; see Linnen against Baillie, No 26. p. 5145.; Potter against Ure, No 6. p. 5129.; Steel, No 7. p. 5131.

Answered; Although the statute 1563, c. 72, made no distinction between ecclesiastical and temporal lands, it is plain that in consequence of it, ministers got right to glebes, only in those parishes where before the reformation the parson or vicar had enjoyed that accommodation. Accordingly, the act 1572, c.

No 22. 48, made to explain it, expressly appoints the new glebe to be designed out of the old one; the consequence of which was, that although there were church-lands within the parish, no designation could take place, unless there was an old glebe; M'Kenzie's Observ. on the act Ja. VI. Parl. 3. c. 48; Minister of Inverkeithing against Ker, No 4. p. 5124. The act 1592, c. 118, extended the privilege of a manse and glebe to those parishes where there had been none before, provided there were in the parish lands formerly belonging to cathedrals or abbeys, out of which they could be designed. The act 1593, c. 165, was the first which gave the clergy in general a right to them out of any kirk-lands in the parish, according to the order therein laid down.

As, however, in terms of this statute, the minister might be obliged to take his glebe out of lands at a distance from his manse, while there were others belonging to a more favoured order of the clergy in his immediate neighbourhood; the act 1606, c. 7. provided that ministers subjected to this hardship should be entitled to 16 soums of grass, 'and that of the maist commodious and best pas-'turage of ony kirk-lands lyand next adjacent and maist nearest to the said 'kirks.'

The act of convention 1644, declared, that it should be competent to design manses and glebes out of kirk-lands, in terms of the act 1593, and where there are no kirk-lands within the parish, or when the same are mortified to universities, schools, or hospitals, that it should be lawful to design them out of temporal lands.

The act 1649, when it provides that glebes inconvenient from their situation should be changed, and new ones designed within a quarter of a mile from the manse, applies only to the case where there were church-lands to be found within that distance. At any rate, both these acts of convention 1644 and 1649, are now rescinded. Neither does it follow from the act 1663, c. 21. declaring that incorporated acres are not to be designed for glebes, that temporal lands are to be subjected to that burden, when their situation renders them most convenient for the minister. Accordingly, in consistency with this view of the statutes, it is a point settled by the opinions of all our law-writers, and by the decisions of the Court, that temporal lands can be allocated only where there are no church-lands in the parish; Stair, b. 2. t. 3. § 40; M'Dowal, b. 2. t. 8. § 120; Ersk. b. 2. t. 10. § 59; Lamond against Bennet, No 16. p. 5137; Lord Forret against Maters, No 19. p. 5139; Nicolson against Porteous, No 12. p. 5136.

The advantages arising to the minister from the opposite doctrine are much exaggerated; at any rate, such views cannot be attended to in opposition to the enactments of the legislature.

The Lord Ordinary reported the cause on informations.

The Court were much divided in their sentiments. Several of the Judges were of opinion, that where the church-lands in a parish lie at an inconvenient distance, ministers are entitled to have their glebe designed out of temporal

lands. The legislature, (it was observed), certainly did not intend that the clergy should be obliged to let them in lease to a tenant, which would often be the inevitable consequence of the suspender's doctrine. The act of convention 1649 clearly implies, that temporal lands were subjected to this burden, and that the ministers of all landward parishes were to be provided in glebes near to their manses and offices; and although the statute 1663 is shortly expressed, the same conclusion may fairly be drawn from it, especially if the practice over Scotland is to have any weight in its explanation; where a single instance will scarcely be found of a minister having his manse and offices at the distance of a mile from his glebe; which nevertheless must frequently have occurred, if it had been understood that he might have been obliged to accept of church-lands, however remote, if within his parish. No 22.

On the other hand, a majority admitted the hardship on the minister, but were of opinion, that as in this question the power of the Court arose entirely from statutes, they were bound to adhere to their strict letter; and that on a sound construction of them, church-lands *in suo ordine*, when within the parish, must in the first place be designed; especially as this was the opinion of Stair, whose authority must have great weight in all cases like the present, which turn upon the construction of our older statutes, and where the point is not settled by a train of decisions.

THE COURT, by a narrow majority, found, that the lands allocated by the presbytery, being temporal lands, are not liable to be designed, when there are church-lands in the parish; and therefore sustained the reasons of suspension of that designation.

On advising a reclaiming petition with answers, the Court adhered.

Lord Ordinary, *Monboddo*. For the Charger, *Tait, James Clerk, Monypenny*.
For the Suspenders, *Dean of Faculty Erskine, D. Cathcart*. Clerk, *Home*.

R. D. *Fol. Dic. v.* 3. *p.* 251. *Fac. Col. No* 124. *p.* 277.

SECT. VI.

A Glebe being designed and possessed, there cannot be second designation.

1605. *May* 25. NAIRN *against* TWEEDIE.

No 23.
A glebe being designed and possessed a new designa-

NAIRN minister of Linton having obtained designation of his glebe, and thereupon charged Simon Tweedie, who suspended upon an anterior designation