" party alleging himself to be aggrieved by such
" imprisonment; and that the date of delivery writ-
" ten upon such a petition ought not to be taken to
" be conclusive evidence of the actual and true date
" of such delivery. And it is farther ordered, that
" with this declaration the cause be remitted back
" to the Court of Session in Scotland, to review ge-
" nerally the several interlocutors complained of;
" having in such review special regard to the nature
" of the summons in this proceeding by the Appel-
" lant alone, and its allegations and conclusions:
" and thereafter to do in the said cause what to the
" said Court shall appear meet and fit to be done."

June 29, 1814.

WRONGOUS IMPRISONMENT.—STAT. 1701, CAP. 6.

Agent for Appellant, CAMPBELL.
Agent for Respondent, LONGLANDS.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

ANDERSON, of Inchry—*Appellant.*
THOMAS, Minister of Abdie—*Respondent.*

July 4, 6, 1814.

MINISTER'S GRASS GLEBES.

DESIGNATION of certain lands for a Minister's grass glebe objected to on the grounds that there had been a payment in lieu of such grass glebe for about a century of 20*l.* Scots, (but no decree of Presbytery for it appeared on record;) that the ground was arable, and under cultivation at the time of the application for the designation; and that the lands designated were not those nearest the church. Pleaded on the other hand, that—there being no recorded

July 4, 6, 1814.

MINISTER'S GRASS GLEBES.

decree of Presbytery—the presumption was, that the payment arose from a private agreement between the heritors and Minister for the time being, not binding on the successors; that the lands in question were best adapted for pasture, and the nearest to the church that were convenient for the purpose.—Judgment for the Minister below—affirmed above, with 80*l.* costs.

Grass glebe designated to Minister of Abdie.

IN 1805 the Presbytery of Cupar, in Fife, on the application of Mr. Thomas, Minister of Abdie, designated certain lands, chiefly out of the Appellant's property, to the Respondent, Mr. Thomas, to make up a deficiency in the usual half acre allowed for the site of the manse, offices, and garden, and also for a grass glebe, in terms of the act of 1663, cap. 21. The Appellant, Mr. Anderson, conceiving himself aggrieved, brought the matter by suspension before the Court of Session. The Lord Ordinary "found, "that though it might be usual to allow a full half "acre for manse, offices, and garden, on a new de- "signation, it was not legally necessary that the "precise quantity should be made up by an after "designation; and that, under the circumstances of "this case, the demand was not founded in law." This was acquiesced in; and the only question was as to the grass glebe. The Lord Ordinary decided for the Minister; and the Court—suspending the letters as to an acre given beyond what was sufficient—adhered *quoad ultra*, and the Appellant appealed.

Suspension.

Not legally necessary by an after designation to make up the deficiency in the half acre usually allowed in new designations for the manse, offices, and garden.

To the designation of the grass glebe there were three grounds of objection:—1st, That for about a

century before, 20*l.* Scots had been paid by the heritors to the Ministers of Abdie in lieu of the grass glebe for a horse and two cows; and that it was to be presumed that this payment originated in a decree of Presbytery, (though none such was to be found on its records,) both from the length of time for which the payment had existed, and according to the legal presumption, "*Quod omne rite et solemniter actum fuerit.*" 2d, That the act of 1663 provided, that in case there were no church lands *near* the church, or in case such church lands were *arable*, the heritors should pay the 20*l.* Scots in lieu of the grass glebe; that the proper criterion for deciding whether the lands were arable was the fact of their being or not being under cultivation at the time of the application to the Presbytery; and that at such time, in the present instance, half of Mr. Anderson's lands designated were under cultivation. 3d, That there was abundance of pasture lands *nearer* to the church than the lands in question; and that all the statutes respecting the designation of glebes directed them to be taken out of lands *nearest* the church.

On the other hand it was contended,—1st, That there being no record of a decree of Presbytery, the presumption was, that the payment of 20*l.* Scots had originated from some agreement between the Minister for the time and the heritors, which could not bind the successors, and had been continued through the negligence of the incumbents. 2d, That the argument that the grass glebe must be allocated out of lands *nearest* the church, attending to the

July 4, 6, 1814.

MINISTER'S GRASS GLEBES.

Case of the Minister of Dollar, Fac. Coll. July, 1807.

Minister of Panbride v. Maule, Fac. Coll. 1809.

Case of the Minister of Jedburgh, 1807.

1593, cap. 165.
1594, cap. 202.
1606, cap. 7.
1663, cap. 21.

Case of Dollar, 1807.—Holket v. Lawrie, 1784.—Minister of Panbride v. Maule.

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MINISTER'S GRASS GLEBES.

Dalrymple v. ——, Kilk. 1748 — Hodges v. ——, 1756.— Grierson v. ——, 1778.

most trifling distance, and totally disregarding convenience and every other circumstance, had no foundation in the words or spirit of the statute of 1663, cap. 21, or any other statute. 3d, That the only proper criterion as to whether lands were or were not arable within the meaning of the statute was that adopted by the Presbytery and the Court below; viz. whether the lands were most fit for tillage or for pasture; and in the present instance they were in their nature best adapted for pasture.

Romilly and *W. G. Adam* for Appellant; *Horner* for Respondent.

July 6, 1814. Judgment.

Affirmed without observation, with 80*l.* costs.

Agents for Appellant, SPOTTISWOODE and ROBERTSON.
Agent for Respondent, CHALMER.