

No 31.

Every minister in Scotland, therefore, would be entitled to insist, that the heritors shall provide him, not only with fuel, but also with foggage, fail, divot, &c. No such claims as these were ever heard of, which is satisfactory evidence of what has been always understood to be the intention of the statute.

The pursuer having likewise *alleged*, That he and his predecessors had, at different times, taken their peats from different mosses in the parish, besides the mosses now exhausted, the COURT ordained the pursuer to give in a special condescendence of these alleged acts of possession; and a condescendence being accordingly given in, the COURT pronounced this judgment:

'Having resumed the consideration of this cause, with the foregoing condescendence in behalf of the pursuer, and answers for the Duke of Montrose defender, they find the condescendence not relevant; sustain the defence for the Duke of Montrose, and assoilzie him from his process.'

Lord Ordinary, *Monboddo*. Act. *W. Robertson*. Alt. Lord Advocate. Clerk, *Campbell*.
Fal. Dic. v. 3. p. 253. Fac. Col. No 72. p. 136.

S E C T. VIII.

Relief competent to the Heritor, whose land is taken for a Glebe.

1635. February 12. COCK against PARISHIONERS of Auchtergovan.

No 32.

An heritor's lands had been anciently the vicar's glebe. They had been afterwards feued, but before the act prohibiting such feus. He was obliged to give up these lands for the minister's glebe, and was found entitled to the statutable relief from other heritors of the kirk.

JOHN COCK writer having the right of feu of a piece of kirk-land in Auchtergovan, which was feued in *anno 1562*, and since continually possessed by him and his predecessors, while lately that the same was designed to the minister, and evicted by him for his glebe; pursues the rest of the parishioners, heritors of the kirk-lands, for their proportional part of his relief; and they *alleging*, That he ought to have no relief, because by the act of Parliament 1563, the vicar's manse and glebe are discharged to be feued; and this land libelled, designed to the minister, was the vicar's glebe of old, and therefore the feuar thereof ought to have no relief; and albeit the pursuer's feu be in *anno 1562*, and so a year before the act of Parliament, yet it must fall under that act, because the feu was not confirmed until the year 1565, and so is null, and therefore is alike as if it had been feued after that act.—THE LORDS repelled the allegiance, and found that there ought to be relief granted. And it being thereafter *alleged* for one James Rattary a parishioner, that his lands ought not to be sub-

ject to any relief, because he holds his lands of the College of St Andrew's in feu, to which College the same is mortified, before the act of Parliament 1594, which appoints relief; and so belonging to the College, they cease to be kirk-lands; this allegiance was also repelled, and found that these same lands, albeit mortified to the College, yet cease not to be kirk-lands, but that they ought also to pay their part of the relief, for they were feued to the defender for a small feu-duty of L. 8 only.

Act. ———.

Alt. *Nairn.*Clerk, *Hay.**Fol. Dic. v. 1. p. 353. Durie, p. 754.*

No 32.

lands. One of the heritors who held of a college, to which his lands had been mortified, claimed exemption from the relief, alleging his lands were no longer kirk-lands; but his plea was repelled.

S E C T. IX.

Consequences of the Possession of the Glebe.

1781. November 14.

LORD REAY *against* The Reverend MR ALEXANDER FALCONER.

LORD REAY insisted to have it found and declared, That Mr Falconer, as minister of Edrachilles, had no right to the sea-ware upon the shore of his glebe, except for the purpose of manuring his land and feeding his cattle; but that the sole and exclusive privilege of manufacturing said sea-ware into kelp belonging to his Lordship, in virtue of ancient infeftments.

Pleaded for the pursuer; The parish of Edrachilles is part of the Reay estate; and, about fifty years ago, when it was disjoined from the parish of Durness, Lord Reay agreed that a very extensive tract of land should be designed and allocated as a glebe for the minister. But in this designation, although the boundaries are distinctly marked, there is no mention of shores, nor any clause upon which a right to sea-ware, as part and pertinent, can be founded. The original right therefore of the family of Reay still continues, and must be sufficient to exclude any right competent to the minister in virtue of the designation above-mentioned.

The view of the Legislature in making this provision for the clergy, evidently was, that such of them as were situated in the country might have conveniencies about them, which perhaps no addition of stipend could otherwise supply. This is the idea which runs through most of the statutes relative to glebes, as appears both from the situation and extent thereby prescribed; *vide* acts 1563,

No 33.

A minister was found to have no right to the sea-ware on the shore of his glebe, for the purpose of making kelp; that right remaining annexed to the lands out of which the glebe had been designated. In this case the proprietor of the barony did not contend for depriving the minister of the use of the sea-ware for manuring his glebe.