

1709: December 24:

Mr THOMAS LINNING Minister of Walstoun *against* JOHN BAILLIE of Walstoun.

MR THOMAS LINNING having represented to the presbytery of Biggar, that his glebe was both insufficient and inconvenient; in so far as, it is very barren ground, and lay at a great distance from the church and manse; they ordered a new designation of a sufficient glebe in terms of the 165th act, Parl. 1593; pursuant to which four acres of arable ground nearest to the church were measured out and designed. The minister having charged the possessor, who was Walstoun's tenant, to remove, Walstoun suspended the act of presbytery. At the discussing of which suspension, the LORDS found, that the act of Parliament doth only warrant the designation of a glebe to a minister who has no glebe; or to make up the legal quantity to one whose glebe extends not to four acres of land; but doth not empower the presbytery to change and alter glebes, or to design a new glebe to a minister who is already in possession of a competent glebe, albeit it doth not lie most ewest to the church.

*Fol. Dic. v. 1. p. 352. Forbes, p. 375.*

\* \* \* Fountainhall reports the same case :

MR THOMAS LINNING minister at Walstoun having an insufficient glebe lying in a muir on the top of a scalpie hill, at a distance from the kirk and manse, and in a very barren soil, affording little more than the seed, he applies to the presbytery for a better one; who appoint a visitation, and by tradesmen joined with some of their own number, they measure out four acres of John Baillie of Walstoun's lands lying more contiguous to the manse, and design it for his glebe. Of this act Walstoun raises suspension and reduction on these reasons, that the act 48th 1572, and act 165th 1593, do warrant the designation of a glebe where there was none of old, or where it does not extend to four acres full, the bishops or presbytery are authorised to supply the inlake; but there is no law warranting them to alter and change a glebe where it is full. But *ita est* the ministers of Walstoun, ever since the reformation, have been in possession of a glebe, which is not pretended to be short of four acres; but only to be bad and marsh ground; and yet all the ministers there before Mr Linning never complained, but rested content therewith, though some of them lived more than twenty years on the place; and he might very well have acquiesced in what his predecessors did these hundred years bygone; neither is his old glebe so barren and insufficient as he calls it, seeing that may arise from want of guiding, and bad labouring; and even a part of the old is designed and retained in this new glebe; and the presbytery were very partial, for they should first have measured his old glebe, to see if he wanted any thing of four full acres; but they knew it was more, and yet would give him off the best of Walstoun's ground without warrant from any act of Parliament; and if they be once allowed to

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The act of Parliament relative to designation of glebes, only warrants the presbytery to design a glebe to a minister who has none, or to make up the legal quantity to one whose glebe is less, but does not empower them to change or alter glebes.

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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.*

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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