1805. *December* 6. DUNDAS, and Others, *against* SOMMERVILLE.

No. 5.
A full grass-glebe may be designated to a minister, although his arable glebe exceeds four acres.

DR. THOMAS SOMMERVILLE, minister of Jedburgh, who was in possession of an arable glebe of more than six acres, applied in 1798, to the Presbytery of the bounds for the "designation of a grass-glebe, sufficient to maintain a "a horse and two cows," in common form.

Objections were stated by the Right Honourable Robert Dundas of Arniston, and others, trustees of the late John Davidson of Halltree, proprietor of the lands of Stewartfield, in the neighbourhood. But the Presbytery over-ruled their objections, and designated five English acres of ground, a part of the estate of Stewartfield, which had been kirk lands, as most proper for this purpose.

A charge having been given by the minister on this decree, Mr. Davidson's trustees presented a bill of suspension; and the case was taken to report by the Lord Ordinary. The minister

Pleaded: The object of the act 1663, C. 21. was to provide for ministers of country parishes, "grass for one horse and two kyne, over and above their "glebe." Now, the present arable glebe of the minister of Jedburgh was designated long before the enactment of that statute; and it is impossible, consistently with the words of the act, to suppose that the Legislature took into consideration the glebe of which a minister was then possessed; more especially as the preamble of the statute sets forth, that the provision for ministers was in many places inadequate, and ought to be increased. A different rule may possibly hold, where there is evidence of a designation of a glebe since 1663; because, wherever a considerable surplus appears above the standard quantity of four acres, it is possible that the excrescent quantity may have been given in satisfaction of the minister's claim for grass. The law does not limit a minister's arable glebe to four acres, because there is great difference in the quality of soil. As early as 1572, C. 48., it was provided, that the glebe should consist of four acres of land "at least." The circumstance of a glebe exceeding this *minimum* is no bar to the minister's application for grass under the act 1663; Erskine, B. 2. T. 10. § 62.; Bankton, B. 2. T. 8. § 123.; Bethune against Dallas, 7th January 1734, (mentioned by Bankton.)

Answered: By the act 1592, C. 118., the legal extent of an arable glebe is ascertained to be four acres. The object of the act 1663 was to provide pasture for the clergy, only in those cases where it was wanting; because, if over and above the legal standard of glebes, the requisite quantity of pasture was already possessed by a minister, he could not complain of the hardship which that act was intended to remedy. The Legislature must be presumed to have had in view the legal standard of glebes, in framing the act 1663. The ground, therefore, which the charger possesses over and above the extent of a legal glebe, must be deducted from the grass-glebe to be designated

to him; otherwise, as there are no records of the designation of grass; as all the ground possessed by a minister is known by the general denomination of glebe; and as the grass-ground may be ploughed up, and turned into arable-land; it may happen that ministers may, at different intervals, get new designations of grass. Accordingly, the Court have been in use to take the additional ground into account, in applying the act 1663; Forbes against Millar, 26th November 1755, No. 5. p. 5127; Minister of Kilmadock, 11th July 1801, (not reported.) No. 5.

The suspenders further maintained, in point of fact, that the charger had not produced sufficient evidence, that his present glebe had been designated prior to 1663, though they did not state any circumstances to shew that it had been designated subsequent to that period.

The Lords pronounced the following interlocutor: "Upon report (28th "November 1804) of the Lord Craig, and having advised the mutual memo-"rials for the parties, the Lords find the minister entitled to a designation of "a full grass-glebe, over and above the glebe he presently enjoys; and in so "far find the letters orderly proceeded."

A petition was presented by Mr. Davidson's trustees against this interlocutor; upon advising which, with answers, "the Lords (19th February 1805) "alter the interlocutor reclaimed against, and find, That the respondent is "only entitled to get as much ground designated to him, as, when added to "what he already possesses, over and above the arable glebe of four Scotch "acres, will be sufficient for the pasture of one horse and two cows, in terms "of the act 1663."

Upon advising a reclaiming petition for the minister, with answers, the Lords again altered their interlocutor, (20th November 1805) "And, in "terms of the former interlocutor of the 28th November 1804, find the "petitioner entitled to a designation of a full grass-glebe, over and above the "glebe he presently enjoys; and in so far find the letters orderly proceeded, "and decern."

And a reclaiming petition of Mr. Davidson's trustees against this interlocutor was refused without answers.

Lord Ordinary, *Craig*. Act. *Wolfe-Murray*. Agent, *S. C. Somerville*, W. S.
Alt. *Boyle*. Agent, *H. Warrender*, W. S. Clerk, *Pringle*.

J. *Fac. Coll. No.* 227. *p.* 515.

*** On this subject of "Ministers Grass," (Sect. 11. *voce* GLEBE,) the following case, PARISHIONERS of BANCHRIE against their MINISTER, 16th February 1675, Dirleton, p. 124, was by mistake omitted.—"In the case of the Parishioners of Banchrie against their Minister, the Lords found, That the Act of Parliament, 8. Sess. of his Majesty's 1st. Parl. Cap. 21. ordaining that ilk minister should have grase for one horse and two kine, over and above their

No. 5. gleb, did import, that ministers should have the said grass, or £20. conform to the said act, albeit their glebes which they had formerly, did extend to four aikers, and much more than would be grass, if the same were left lee to that purpose, for a horse and two kine. Some of the Lords were of a contrary opinion, seing, by the Act of Parl. K. Jam. 6. Parl. 18. Cap. 7. where there is no arable land, 16. Soums grass is to be designed for the four aikers which the law appoints to be designed for glebes; and upon the ground foresaid, ministers having 16 soums grass, may pretend to have as much more grass designed to them as will keep a horse and two kine, or £20."

Hattoun, Reporter. Clerk, *Hamilton*.

1807. *June* 3.

MINISTER of NEWTON and PRESBYTERY of DALKEITH, *against* The HERITORS of NEWTON.

No 6.
Right of a minister to work the coal in a glebe.

UNDER the glebe belonging to the minister of the parish of Newton, lies a bed of coal, which the minister proposed to let, at the sight of the presbytery of Dalkeith, for the benefit of himself and his successors. Doubts having occurred as to the legality of this measure, the question was brought into Court by a bill of suspension at the instance of the heritors, and by a declarator on the part of the minister and presbytery.

The Lord Ordinary ordered informations.

The minister and presbytery

Pleaded: Previous to the Reformation, the property of glebes was vested in the ecclesiastics absolutely, and was in every respect at their disposal. After the Reformation, it continued on the same footing; and it became necessary, by various statutes, passed at different times, to prevent the incumbent from acting as unlimited proprietor, and rendering it useless to his successors. Thus they are prevented from feuing, or setting long tacks, 1563, C. 72; from selling or annalzieing them, 1572, C. 48; Stair B. 2. T. 3. §. 40; Ersk. B. 2. T. 10. § 61. Glebes are held of the King as the superior, Stair, B. 2. T. 3. § 40; Bankton, B. 2. T. 8. § 127; Forbes on Tithes, p. 217. The power of a minister over his glebe, is necessarily limited, so as to prevent him from doing any thing which may injure his successors; but he may lawfully do any thing which may benefit them, if it do not injure any third party. The heritors can qualify no injury whatever, but, on the contrary, the benefit will be such as to free them from future claims of augmentation; and it is derived from a substance at present useless, and which is to be obtained without deterioration of the glebe. Thus, it was found, that a minister might dig peats in his glebe for the use of his family; Mercer against Minister of Lethendy, 22d