

That as the charger has ground sufficient both for the purposes of a glebe and of grass-ground, it is presumed, that the ground has been given for both these purposes, especially as there are above three acres of pasture-grounds in the glebe of Senwick, and two acres and one half in the glebe of Borgue. There are no records kept of the designations of grass; all the land given to ministers commonly pass under the name of the glebe, and often the grass-grounds are ploughed up, and turned into arable land; and therefore, unless it be presumed, that where a minister has ground sufficient for both purposes, the ground has been given for both, it might often happen, that ministers might get grass again and again designed for pasture in the same parish at the distance of some years.

No 5.

THE LORDS found, That the charger being in possession of three glebes, extending to more than a legal glebe for arable ground and grass, was not entitled to an additional designation to these glebes; and therefore suspended the letters *simpliciter*.

Act. *And. Pringle, Dav. Dalrymple, et Bruce.* Alt. *Lockhart.* Clerk, *Home.*

Fol. Dic. v. 3. p. 251. Fac. Col. No 165. p. 246.

SECT. III.

Presbytery's jurisdiction in designing Glebes.

1710. December 6. POTTER against URE.

LORD FORGLEN reported Mr Michael Potter against Ure of Shargarton and Mr James Ure writer to the signet, his son. Mr Potter being admitted minister at Kippen, and alleging that his glebe wanted half an acre of 4 acres, after measuring, he procures a visit by the moderator and some of the ministers of the presbytery of Dumblane, who for making up his deficient quantity designed half an acre of Shargarton's lands; by which he thinking himself lesed, presented an advocation on reasons of iniquity committed by the presbytery, in designing his ground, which was not kirk-lands, but held feu of the Forresters of Kilmore. *2do*, That they had appointed the entry to his glebe to be 20 feet broad, whereas the 38th act 1661 prescribes that breadth only to highways leading to and from market-towns and sea-ports. *3tio*, That they employed one Walker, never known to be a sworn metster, and who has grossly erred in his measuring, and refused to let try his chain and poles, whether they were above six Scots ells, and how many roods and falls they contained. *4to*, That

No 6.

The designation of a glebe advocated from the presbytery to the Lords upon grounds of iniquity.

No 6. he had inclosed and taken in a large grass yard, more than other ministers possessed, and therefore it should go in computation of a part of his glebe. *Answered* for Mr Potter and the presbytery, That they by law were sole and primitive judges to ministers' glebes and manses *in prima instantia*, even as the commissaries were in divorces, and the admiral in maritime cases; and as the bishops and superintendants were founded in this right by the 48th act 1572, and 21st act 1663, so the presbytery comes in their place, and the Lords have not been in use to meddle in such cases till they first commit injustice, and then they can redress by way of suspension and reduction, but not so properly by way of advocacy. *Answered* to the *first* reason, That the common appellation of that half acre makes it appear to be kirk lands, for it is vulgarly called the clerk's or beadle's acre, and there are no other kirk lands near the manse. To the *2d*, The law requires that ministers have free ish and entry to their glebes, to give an easy passage to his carts and wains, that one may pass by another. To the *3d*, They oppone the sworn metster's report upon oath, and he is frequently employed by others in that country. *4to*, His heritors should not envy his little Naboth's vineyard, it being no more than sufficient to furnish him kail and other pot-herbs. *Replied*, That he condescended on the Ladylands, which were unquestionably kirk-lands, being dedicated to the blessed Virgin Mary, and they ought *primo loco*, to be allocated to make up the glebe, rather than his lands, which by the charters were not kirk-lands. The difficulty here was, it would be very inconvenient for ministers, where there were not 4 acres of kirk-lands adjacent to the manse, to send them a mile or two farther to get a supplement of other kirk-lands lying at that distance; and it were far more reasonable to make it up by the nearest temporal lands, that all might lye contiguous, and give that heritor his relief against the proprietors of the other kirk-lands in the parish. Others said this was to alter the subject burdened by law for glebes, which is expressly the nearest kirk lands. THE LORDS remembered in many cases they had remitted such trials with qualities, directions, and instructions how to proceed; and at other times had advocated the matter to themselves; and finding some intricacy and encroachment in this case, they by plurality advocated the trial to themselves.

Fol. Dic. v. 1. p. 350. Fountainball, v. 2. p. 603.

* * * Forbes reports the same case :

THE LORDS, at the instance of James Ure of Shargarton and his son, advocated, upon grounds of iniquity, from the presbytery of Dumblane, the designation of an augmentation of glebe in favours of Mr Michael Potter; albeit it was *alleged* for the presbytery, That they, as come in place of the Bishop, being Judges *in prima instantia*, had a private jurisdiction, and the LORDS could not advocate from them, more than divorces could be advocated from the Commissaries, or causes maritime from the Admiral.

Forbes, p. 445.