

lands. The legislature, (it was observed), certainly did not intend that the clergy should be obliged to let them in lease to a tenant, which would often be the inevitable consequence of the suspender's doctrine. The act of convention 1649 clearly implies, that temporal lands were subjected to this burden, and that the ministers of all landward parishes were to be provided in glebes near to their manses and offices; and although the statute 1663 is shortly expressed, the same conclusion may fairly be drawn from it, especially if the practice over Scotland is to have any weight in its explanation; where a single instance will scarcely be found of a minister having his manse and offices at the distance of a mile from his glebe; which nevertheless must frequently have occurred, if it had been understood that he might have been obliged to accept of church-lands, however remote, if within his parish.

No 22.

On the other hand, a majority admitted the hardship on the minister, but were of opinion, that as in this question the power of the Court arose entirely from statutes, they were bound to adhere to their strict letter; and that on a sound construction of them, church-lands *in suo ordine*, when within the parish, must in the first place be designed; especially as this was the opinion of Stair, whose authority must have great weight in all cases like the present, which turn upon the construction of our older statutes, and where the point is not settled by a train of decisions.

THE COURT, by a narrow majority, found, that the lands allocated by the presbytery, being temporal lands, are not liable to be designed, when there are church-lands in the parish; and therefore sustained the reasons of suspension of that designation.

On advising a reclaiming petition with answers, the Court adhered.

Lord Ordinary, *Monboddo*.

For the Charger, *Tait, James Clerk, Monypenny.*

For the Suspenders, *Dean of Faculty Erskine, D. Cathcart.*

Clerk, *Home.*

R. D.

*Fol. Dic. v. 3. p. 251. Fac. Col. No 124. p. 277.*

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## S E C T. VI.

A Glebe being designed and possessed, there cannot be second designation.

1605. *May 25.*

NAIRN *against* TWEEDIE.

NAIRN minister of Linton having obtained designation of his glebe, and thereupon charged Simon Tweedie, who suspended upon an anterior designation

No 23.

A glebe being designed and possessed a new designa-

No 23.  
tion was re-  
fused; but  
there being a  
dispute about  
the quantity,  
the Lords  
ordained it to  
be again mea-  
sured.

made to the same minister of before, and possession of the minister conform thereto, in respect whereof his letters could not have execution upon any new designation; and because it was *answered* by the minister, That both the designations were of the self same land, and that the first being over little, was met and marched lawfully and orderly; the LORDS ordained the parties to agree upon a common metster to measure the glebe rightly, that the minister may possess conform thereto. Farther the minister charged Tweedie, to laying feal, feul, and divot, conform to the quantity and proportion of his glebe, to the hail kirk-land. THE LORDS found by interlocutor, that if the feuar of the kirk-land had any common pasturage in any commonty, the minister should have the like privilege for the quantity of his glebe; but should have no pasturage nor other privilege in the feuar's proper kirk-lands.

*Fol. Dic. v. 1. p. 352. Haddington, MS. No 772.*

1610. March 7. HENDERSON against L. of LEGG.

No 24.

A MINISTER charging upon his designation, to possess him therein, and the feuar suspending that there is kirk-land more ewest; the minister *answering* in fortification of his designation, That his predecessor minister possessed it twenty years before as glebe; the minister will be preferred.

*Fol. Dic. v. 1. 352. Haddington, MS. No 1848.*

1621. December 14. CLARK against RAMSAY.

No 25.  
A manse and  
glebe having  
been long  
possessed by  
designation  
out of lands  
holden of the  
King, and  
most ewest,  
this was found  
to prevent all  
new designa-  
tions.

MR GEORGE CLARK minister at Aberdour charged Elspeth Brown, and Ramsay her son to remove upon his designation. They suspended; *ratio*, because out of their lands holden of the King, there was designed a sufficient manse and glebe before, in David Howison's time, of 4 acres, quilk he bruicked during his service at the kirk, and so has Mr George since his entry. *Alleged*, oppones the designations. *Answered*, eiks in fortification of the reason, That Mr George has bruicked the manse and glebe libelled 24 years, and there is full 4 acres, and the manse and glebe which he possesses is more ewest than the designation. Admit the reason, and reply to probation.

Clerk, *Durie*.

*Fol. Dic. v. 1. p. 353. Nicolson, MS. No 63. p. 42.*