

No 3. nor is it obvious why ministers in royal burghs, whose charges are generally most laborious and expensive, should in this matter be put in a worse situation than those in parishes entirely landward. When indeed, by statute 1644, lands which had never belonged to the church were, contrary to the general idea of the legislature, made subject to this burden, the inhabitants of royal burghs were exempted from an allotment which the value of property so situated would have rendered exceedingly grievous. But this distinction, originating from that statute, is now completely done away by its repeal.

The exception in the statute 1663 clearly shews, that ministers in royal burghs are not in general excluded from this advantage. For if, by 'ministers having right to glebes,' had been meant those who had obtained them by private endowments, no reason can be assigned for giving to such, an additional preference over their brethren; and agreeably to this the Court decided, Minister of Dysart *contra* the Heritors, No 1. p. 5121.; Minister of Kirkaldy *contra* the Heritors, No 2. p. 5121. The point, Whether a minister of a royal burgh is entitled to a manse, has never yet received a determination on general principles, the decisions quoted having been founded on specialities. There is however an obvious distinction between manses and glebes in this respect; the former, by the acts before the Usurpation, being only due to ministers where there was a parson's or vicar's manse within the parish; whereas the latter could be demanded out of any church-lands so situated.

"THE LORDS repelled the defence."

Nota. It was *observed* on the Bench, That the report, February 28. 1769, was erroneous, the decision there having proceeded on the particular circumstances of the case.

Lord Ordinary, *Gardenston.*
Clerk, *Tait.*

For Mr Fullerton, *Ilay Campbell.*

For Mr Richmond, *Hay.*

Fol. Dic. v. 3. p. 251. Fac. Col. No 95. p. 183.

SECT. II.

Consequences of uniting Parishes.

No 4.
If the parishes are united, the minister has right to both glebes.

1631. *January 22.* ROUGH, Minister of Inverkeithing, *against* KER.

MR ROBERT ROUGH, minister at Inverkeithing, whereto the kirk of Rosyth was annexed by act of Parliament 1618, having charged John Ker to remove

from the glebe of Inverkeithing, which was designed to him; who suspending, that he had the glebe of Rosyth, and ought not to have two glebes, since both these kirks by Parliament were united in one, specially where there was never of old a glebe in Inverkeithing; which, if ever it had been, he would not have contended, but the minister ought to have two; but there never being one there, and the minister now having a glebe, he ought not to have that glebe at Rosyth, and another now at Inverkeithing, where there was never any. THE LORDS found not this reason relevant, but found, that notwithstanding of the union of the parish-kirk of Rosyth to Inverkeithing, at the which kirk of Rosyth there was a glebe, and albeit that glebe was possessed by the minister, and although there was never a glebe at Inverkeithing, yet there was no cause to exclude the minister from seeking a glebe for the parish-kirk of Inverkeithing; seeing the same being a parish-kirk, and kirk-lands therein, by the act of Parliament ilk parish-kirk ought to have their own glebe; and the plantation of kirks in *anno* 1618, whereby these kirks are united, provides the ministers so, by and besides their glebes; and was ordained for bettering of the ministers and kirks, and not to prejudge them; and that commission gave no warrant to take the glebe from the kirks, as *in facto* they did not.

February 11.—THIS cause being mentioned the 22d day of January 1631, the minister craving to remove from the manse, designed to him with his glebe; and which manse was acclaimed as being built upon the said glebe, and consequently ought to pertain to the minister, seeing the glebe pertained, as designed to the minister, being the nearest kirk-land to the kirk;—THE LORDS found, That albeit the most ewest kirk-lands to the kirk, where there was no parson or vicar-lands there before, might be designed; yet that the houses being upon that kirk-land, could not be designed lawfully, nor acclaimed by the minister, if these houses pertained never to the parson nor vicar of before, nor to any minister serving the cure at that kirk; for seeing there was not such a manse bruiked by any kirkman of old at that kirk, and that there was no warrant for giving to the minister a manse in such cases, by any act of Parliament, the LORDS found, That albeit the minister might seek by warrant of act of Parliament, *eo casu* a glebe, where there was kirk-land within the parish, there being neither parson nor vicar's glebe therein, yet that he could not thereby claim the houses upon that kirk-land as his manse; but that he might either deal with the parishioners for bigging of a manse to him, or pursue them therefor *prout de jure*, or otherways big his own manse, the expenses whereof would be refunded to his executors by the next intrant, conform to the act of Parliament. See MANSE.

Act. *Nicolson et Baird.*Alt. *Stuart.*Clerk, *Gibson.**Fol. Dic. v. 1. p. 350. Durie, p. 557. & 568.*

* * Auchinleck reports the same case :

No 4.

MR ROBERT ROUGH, minister of Inverkeithing, pursues removing against John Ker there, from a glebe designed to him out of his land.—It was *excepted*, That the pursuer has already a glebe out of the kirk of Rosyth, in possession thereof, and seeing Rosyth is by the Parliament in *anno* 1618 united to the kirk of Inverkeithing, and so both the parishes made one by union, he can crave no more glebes but one to one parish, and alleges that this was found relevant by the Lords interlocutor in a former suspension, raised by the same defender against the same pursuer, which was produced in process. To which it was *replied*, That the union of the two kirks made not two distinct parishes, and which of their own nature were distinct, and were of diverse dioceses, but only united them to the effect one minister might serve the cure of both; the minister was not put in a worse case than if he had served but one of the said kirks; and seeing by act of Parliament made 1615, every parish-kirk was appointed to have a glebe and manse, the union could not prejudice this pursuer of the benefit of the said act of Parliament, whereunto the act of Parliament made no derogation.—THE LORDS repelled the exception for any thing as yet said.

Auchinleck, MS. p. 85.

* * This case is also reported by Spottiswood :

MASTER ROBERT ROUGH, minister at Inverkeithing, charged John Ker to remove from four acres of land that he had gotten designed to him for a glebe. He suspended upon these reasons, *1mo*, It was a burgh royal, and so the minister should not have a glebe; *2do*, He had a glebe already at the kirk of Rosyth, which was united by the Parliament 1618 to Inverkeithing, and so being but one kirk, served by one minister, he ought not to have two glebes, especially seeing he had no other glebe before the union but only that of Rosyth, which, if he had had, there had been some reason why the minister should not have been prejudged by the union.—*Answered*, By the act of Parliament every kirk is ordained to have a glebe.—*Replied*, That is, every kirk whereat there is service; but here, because of the union, it behoved to be counted but one kirk, and so but one glebe, especially there being no more before the union.—*Duplicated*, Notwithstanding of the union they must be accounted two kirks; because they are in several dioceses, (*viz.* Rosyth in Dunkeld, and Inverkeithing in St Andrew's,) belonging to two several presentations.—THE LORDS found the letters orderly proceeded in favour of the minister, although there had never been a former designation before the union.

In that same cause Mr Robert Rough having craved for his manse a house built by the defender upon the glebe libelled, he *excepted*, That there being no

manse of old there, but built of late, it could not belong to him by virtue of the act of Parliament; which exception the LORDS found relevant.

No 4.

Spottiswood, p. 192.

1755. November 26.

MR DAVID FORBES, Minister of the Gospel at Borgue, *against* JOHN MILLER, Factor upon the Sequestrated Estate of Carletoun.

THE present parish of Borgue consists of what was anciently three parishes, viz. Borgue, Senwick, and Kirkanders: The minister was in possession of the three glebes which had anciently belonged to these parishes, each of which glebes was below the legal standard appointed by act of Parliament, but when taken together were above it, and were besides sufficient for grazing a horse and two cows.

When Mr Forbes was admitted to be minister at Borgue in March 1752, the presbytery of Kirkcudbright inquired if there was a legal glebe at Borgue, and if the minister was provided with grass for a horse and two cows, as is appointed by the 21st act, Parliament 1663; and finding that the glebe at Borgue was below the legal standard, and that there never had been any designation of grass made, the presbytery proceeded, according to the usual form, to make an addition of arable ground to the old glebe, and to make a designation of grass for one horse and two cows, out of church-lands lying contiguous to the old glebe.

As the lands designed for an addition to the glebe and for grass were part of the estate of Carletoun, John Miller, who had been appointed factor thereon by the Court of Session, obtained suspension of the presbytery's decret, and *pleaded*, That as the arable land in all the three glebes, when taken together, exceeded a legal glebe, and that the minister had in these glebes sufficient pasturage for a horse and two cows, he was not entitled to any addition, either for arable land or for pasturage.

Answered for the charger; That by the 48th act of Parliament 1572, and 118th act, Parliament 1592, ministers are entitled to four acres and a half at least, out of the church-lands which lie nearest to the manse; and the annexing of the parishes of Kirkanders and Senwick to the parish of Borgue, could not deprive the minister of his right of having a legal glebe contiguous to his manse at Borgue; for these annexations were intended for the benefit of the clergy, and ought not to turned to their prejudice. Agreeable to this the Court decided, *Rough contra Ker*, No 4. p. 5124. where the minister of the united parishes of Inverkeithing and Rosyth got a glebe designed to him at Inverkeithing, although he had one at Rosyth; and lately, in the case of the minister of Kelton, the Lords found him intitled to an addition to his glebe at Kelton, although

No 5.

A minister of an united parish who had three glebes, each below the legal standard, but when taken together above it, was found not entitled to an additional designation.