

1756. February 27. HODGES against Mr BRYCE, Minister of Kirknewton.

No 41.

Ground may be assigned to a minister for grass, tho' it has been in use of being ploughed for three years, and lying in grass three years alternately.

THE presbytery of Edinburgh designed outfield, which had been in the constant use of being ploughed, and lying in grass alternately, for the minister's pasturage.

*Alleged* for the Heritors, in a suspension; Arable land cannot be designed. The statute 1663, c. 21. ordains L. 20 Scots to be paid yearly, if there be no kirk-lands lying near the minister's manse, 'or if the said kirk-lands be arable land;' and this matter was so determined, Steele against His Parishioners, No 7. p. 5131.

*Answered*; The ground designed is bare, with a large rock in the middle of it; and, as it has confessedly been in use to lie sometimes in lee, it might be designed. The construction which the heritors put upon the act goes too far; few ministers would be entitled to grass, if no ground could be designed, any part of which is arable. The decision from Fountainhall does partly support the designation. It was found, "That the heritors must not *in emulationem* till up that which was in use to be lee, since they so must leave nothing for the minister but moss, muir, hills, or rocky ground, to the defrauding the good design of the law, and the minister's manifest prejudice."

"THE LORDS refused the bill."

Act. W. Wallace.

Alt. D. Dalrymple.

Clerk, Home.

W. S.

Fol. Dic. v. 3. p. 252. Fac. Col. No 192. p. 284.

No 42.

By arable lands in the statute 1663, are meant lands in a continued state of cultivation, tho' bearing occasionally crops of grass, and not constantly under plough. The condition of the lands, when the designation is required, not their ancient state, is to be considered.

1778. June 26. CHARLES GRIERSON against JOHN EWART.

THE presbytery of Dumfries, upon the application of John Ewart, minister of Troqueer, designed to him nine acres of kirk-lands, belonging to Grierson, for minister's grass, on the statute 1663, c. 21.

Grierson brought a reduction of the presbytery's decret on this ground: That the lands designed fall within the exception of the act 1663: 'That, if there be no kirk-lands lying near the minister's manse, out of which the grass may be designed; or, otherwise, if the said kirk-lands be arable lands; in either of these cases, ordain the heritors to pay the minister, and his successor, yearly, L. 20 Scots for the said grass.'

The lands in question are arable lands; they were inclosed with dyke and ditch 20 years before the designation, and have been producing either crops of grain, or rye-grass and clover; consequently they cannot be designed.

*Answered* for the defender; By 'arable lands,' in this statute, are not to be understood all lands capable of being ploughed. The extent of this exception in the statute is explained by the mode of agriculture at the time. No lands, in those days, got the name of arable, but such as were kept constantly under