

1794. November 14.

The Reverend MR JAMES RAMSAY, Minister of Maderty, Charger, *against*  
The HERITORS.

No 35.

A MINISTER who had discovered a marl pit in his glebe, offered, if he should be allowed to sell it, to employ the money at interest, or in buying land for the use of the benefice.

THE COURT found, That he was entitled to work the marl, provided it could be done without injury from the over-flowing of a river; and that the produce should be applied for the service of the benefice.

Ordinary, *Henderland.* For Mr Ramsay, *Wm Robertson, Jo. Clerk.* *Geo. Tod, Agent.*  
For the Heritors, *D. Williamson.* *G. Andrew, Agent.* *Clerk, Menzies.*

*Fol. Dic. v. 3. p. 251.*

## S E C T. X.

## Powers of the Incumbent.

1791. May 14.

The MINISTER of the United Parishes of Little Dunkeld and Lagganallachie  
*against* The HERITORS.

THE living of Little Dunkeld and Lagganallachie has two glebes annexed to it; one at Little Dunkeld, contiguous to the manse, and consisting of six acres of arable land, and two of pasture; and the other about two miles distant, at Lagganallachie, containing about four acres, one half arable, the other half pasture.

The yearly produce of the grounds at Little Dunkeld, cultivated in the ordinary way, could not be rated at more than 20s. per acre. But being well adapted for the establishment of a manufacturing village, the minister, with the approbation of the presbytery, feued out several acres for a yearly payment of about L. 6 per acre.

Some of the heritors having considered this transaction as *ultra vires* of a parish-minister, the question came to be tried in a process of suspension; in which the minister

No 36.

A minister has no power to feu out his glebe for building on, though on the most advantageous terms.

No 36.

*Pleaded*, A parochial minister, it is true, is not proprietor of the glebe, which he holds partly as a liferenter, and partly as a legal administrator; but that does not hinder him, any more than it formerly did the dignitaries of the Romish church, or than it now does the administrators of the different corporations established for the advancement of trade or of learning, from entering into such bargains respecting the landed property belonging to these communities as are evidently beneficial; act, 1457, c. 71.; 1503, c. 91.

Thus, by the common law, the feuing of a glebe, when followed out with a proper attention to the interest of the living, is not prohibited. And on a just survey of the enactments on this head, they will be found as little calculated to restrain transactions similar to the present. The first of these, being 1563, c. 72. prohibiting the granting of feus, or long leases, without the consent of the Queen then reigning, was merely temporary. The subsequent regulation of 1572, c. 48. is directed only against alienations made by a minister, 'in prejudice of his successors.' And this more clearly appears from the enactment which followed, 1585, c. 11. annulling those leases and feus alone by which the benefice was rendered of less value than before.

This is the opinion of one of the most eminent authors on the Scots law; Erskine, b. 2. tit. 10. § 5. And in support of it, it may be further observed, that although it might have been necessary, at the date of these enactments, to secure to the members of the national church these accommodations in point of living, which then could only be had in the possession of a farm, it will now, in general, be more for their advantage to go to market for what they need, than to retain in their own occupation the scanty portion of land allotted to them, which the precariousness of their title prevents them from cultivating in a proper manner.

*Answered*; Glebes have been provided for parochial ministers, not so much for the purpose of increasing their incomes, as for their personal accommodation; and at the same time, for securing to their parishioners an example of frugal and judicious agriculture. Hence, in determining the extent of the stipend to be given to a parish-minister, the circumstance of his having a glebe more or less commodious is never attended to. It would therefore be evidently contrary to the meaning of the Legislature, if by any agreement, that portion of land were to be converted to other uses.

But the present question does not depend upon loose and uncertain inferences. Many positive regulations having been made for preventing all alienations of ministers glebes. Such is the statute of 1563, which not only prohibits the feuing and letting of manses and glebes without the Queen's consent, but provides that the person serving the cure shall, notwithstanding any such feus or leases, have a suitable dwelling-house with as much land as is necessary for his accommodation.

The subsequent statute in 1572 declares in the most general terms, 'That it shall not be leisome to the ministers present and to come, to sell, annaizie, set

‘ in feu or tacks, or put any in possession of the same, in prejudice of their successors, but the samen to remain always free, to the use and easement of sick as shall be admitted to serve and minister at the said kirk.’ As to the enactment of 1587, which obliges all incumbents to find security that they shall not enter into any agreement by which the value of the living might be lessened, it cannot be supposed to extend their powers in such a manner as to defeat the object which the Legislature had in view.

No 36.

The question having been reported on informations, the Court in general were of opinion, that a minister could not, in any case, grant feus of his glebe.

THE LORDS therefore ‘ sustained the reasons of suspension, and suspended the letters *simpliciter*.’

A reclaiming petition was preferred, but it was refused without answers.

Reporter, Lord Dunsinnan Act. Robertson, Procurator for the Church. Alt. Lord Advocate.  
Clerk, Home.

C.

Fol. Dic. v. 3. p. 251. Fac. Col. No 179. p. 362.

1793. February 8.

The MINISTER of the Parish of Falkland, against DAVID JOHNSTON and Others.

No 37.

IN the year 1650, a contract was made between the minister of Falkland and the titular of that parish, whereby the former, with consent of the presbytery, gave up his manse and glebe, and in lieu thereof accepted of the annual payment of a chalder of bear out of the teinds.

A minister deprived of his manse and glebe, by a contract, which had been entered into with a former incumbent, saved from reduction by prescription, was nevertheless found entitled to a new designation.

Mr Brown, the present incumbent, brought a reduction of this transaction against the present possessor of the glebe; but, he having founded his defence on a prescriptive title sufficient to exclude, was assoilzied.

Upon this the minister applied to the presbytery, to design him a new manse and glebe, which they did accordingly; and he then renounced all claim to the chalder of bear.

The sentence of the presbytery was brought under review by some of the heritors, who

*Pleaded*, The contract 1650, until it be legally set aside, is binding upon Mr Brown and all future incumbents. The presbytery have no right to judge of its validity, which, however, they have virtually done, by their proceedings in this case.

*2dly*, The present possessor of the old glebe has acquired a prescriptive right to it. The heritors ought not to suffer from the negligence of the ministers, in delaying so long to challenge the contract. The pursuer therefore cannot claim a new designation; Edgar, 10th June 1724, Minister of Stonie Kirk against Maxwell, *voce* PRESCRIPTION.