

1807. July 9. MINISTER of DOLLAR against DUKE of ARGYLE.

No. 7.

A minister cannot insist for a grass glebe, his predecessor having, with the concurrence of the presbytery, accepted 20*l.* Scots in lieu of it.

IN 1761, the minister of Dollar applied to the Presbytery of Stirling, to have an arable glebe made, of the legal extent, and to have a grass glebe designed to him. The Presbytery having met, declared what quantity of ground would be sufficient, and recommended to the heritors present, who were proprietors of kirk lands, to call a meeting of all the heritors concerned, betwixt and the 1st day of March next, to accommodate the minister with the additional quantity of ground; with certification, 'that if this is not done betwixt and the 1st day of March next, the Presbytery will proceed to assign and set off what is wanting to make up the glebe from the kirk lands, and most contiguous to it; and further, as it appears there is no grass lying convenient for the minister's horse and cows, the contiguous land being all ploughed, the presbytery, with the consent of Mr. Finlay, (the minister) and the heritors now present, did, and hereby do assign to the minister of Dollar, the sum of £20. Scots yearly, in lieu of grass.'

The presbytery again met (2d March 1762), when they designed the quantity of ground which was necessary for the arable glebe; and 'with regard to the £20. Scots designed in lieu of grass, the heritors present agreed to pay their respective proportions when they shall fall due.'

The payment of £20. Scots continued to be regularly drawn to the year 1785, when the incumbent of the parish applied to the presbytery to have a grass glebe designed for him. The presbytery, accordingly, set apart a piece of ground belonging to the Duke of Argyle for the minister's use.

A bill of suspension against the designation of the presbytery was presented; and the Lord Ordinary appointed the question to be reported upon informations to the Court.

The suspender

Pleaded: When it is provided by 1663, C. 21. that a minister is entitled to have a grass glebe, it is also provided, that if there be no kirk lands in the parish, or, if these be arable, that he must be contented with an annual payment of £20. Scots. Now, here the alternative of the statute was followed; for the minister, with the advice and approbation of the presbytery, accepted of the annual pecuniary compensation, as all the kirk lands near the manse were arable, which having been followed with such long and uninterrupted possession, is a complete bar to the present claim. It was many years ago settled with his predecessor by competent authority, and he cannot now change the arrangement then made. A minister cannot alienate any part of the property belonging to the benefice; but he and his successors will be bound, if he concurs with the presbytery in making an option, where the law has established a recompense, where the right cannot be enjoyed *in terminis*.

Answered: The minister of every parish, with the exception of those in royal burghs, has a legal and indefeasible right to a grass-glebe; and no arrangement, however sanctioned or followed by possession, can make any difference upon the right, as the public law prevents any incumbent from injuring the benefice, by doing or permitting what is unfavourable to his successor. If there be kirk lands within the parish, and these kirk lands be arable, the designation must take place, notwithstanding the previous acquiescence in the payment of the pecuniary compensation; Minister of Falkland, 8th February 1793, No. 37. p. 5155; Halket Craigie against Laurie, 10th February 1804, No. 4. *supra*.

The Court considered, that, in all the former cases, there had only been a private agreement, unsanctioned by the presbytery, to accept of the £20. Scots, and therefore that the minister was entitled to have his legal right, if other circumstances permitted. Here the presbytery, the proper judicatory, had found there was no room for designation of a grass glebe; they put the minister into possession of every thing he was by law entitled to: This has been acquiesced in beyond the years of prescription, and must regulate the future rights of the benefice.

The Court sustained the reasons of suspension.

Lord Ordinary, *Glenlee*.

*Adv. Campbell*.

For Charger, *Craigie*.

Agents, *J. & A. Ferriers*, W. S.

Agent, *Chas. Stewart*, W. S.

Clerk, *Mackenzie*.

*F.*

*Fac. Coll. No. 290. p. 662.*

