

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.

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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

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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.

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He had two other glebes belonging to two parishes which had been united to Kelton. That when lands lie at a distance from the manse, and in the present case the glebes of Kirkanders and Senwick lie two miles from it, they cannot serve for the purposes of a glebe, and are worth no more than the rent they will yield when set, as the minister cannot labour them himself; so may be considered as additions to the benefice, but none to the glebe; and so sensible was the Legislature that the glebe ought to be contiguous to the manse, that by the 7th act, Parliament 1606, it is statute, That where there are no arable lands adjacent to the manse, there shall be designed four souns of grass for ilk acre, of the best pasturage of any kirk-lands lying nearest to the said kirks.

That with respect to the designation for grass, the case was still clearer; for of whatever extent the glebe be, the minister, by act 1663, is intitled to have grass for a horse and two cows over and above the glebe; agreeable to which the Lords decided in favour of the minister of Croy *contra* Dallas, January 1734*; and if there be no church-lands out of which he can get the grass, the act appoints that he shall have L. 20 Scots yearly in lieu thereof. That it was certain there never had been any designation of grass in any of the parishes; for none of the glebes amounted to the legal standard of a glebe, so could not comprehend the grass to which the minister was entitled; and the three parishes were united before the act 1663, at the date of which act the minister was in possession of all the three small glebes he now possesses; and that as these two small glebes, which lie at two miles distance from the manse, could no more exclude the minister from his right to grass than a large stipend could; so neither could they serve the purposes of grass, as he could have no benefit from his horse and cows if they were at two miles distance from him.

Replied for the suspender; That all the provisions to which ministers are by law entitled, are a legal stipend, a manse, a glebe consisting of four acres of arable land, and grass for a horse and two cows; if the minister has these, no matter how they were originally constituted, that is, whether they belonged to an original parish, or if they were made up of the stipends and glebes of two or more united parishes. That the charger might as well insist to have a legal glebe in each of the three parishes, or indeed to have three legal stipends, as to have the addition he now contends for; but as it was sufficient that the three stipends, when added together, made up a legal one, so it was sufficient, that when three glebes were added together, they made up a legal glebe, and also furnished the minister with pasture sufficient for his horse and two cows. That in many parishes the glebe lies at a distance from the manse, and sometimes lies in different places; for the law only directs, that where a minister is to get lands designed for a glebe, there shall be designed out of the lands mentioned in the acts of Parliament four acres at least, lying nearest to the manse; but where there are no church-lands near to the manse, the minister must put up with the inconveniency of having his glebe at a distance.

* Examine General List of Names.

That as the charger has ground sufficient both for the purposes of a glebe and of grass-ground, it is presumed, that the ground has been given for both these purposes, especially as there are above three acres of pasture-grounds in the glebe of Senwick, and two acres and one half in the glebe of Borgue. There are no records kept of the designations of grass; all the land given to ministers commonly pass under the name of the glebe, and often the grass-grounds are ploughed up, and turned into arable land; and therefore, unless it be presumed, that where a minister has ground sufficient for both purposes, the ground has been given for both, it might often happen, that ministers might get grass again and again designed for pasture in the same parish at the distance of some years.

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THE LORDS found, That the charger being in possession of three glebes, extending to more than a legal glebe for arable ground and grass, was not entitled to an additional designation to these glebes; and therefore suspended the letters *simpliciter*.

Act. *And. Pringle, Dav. Dalrymple, et Bruce.* Alt. *Lockhart.* Clerk, *Home.*

Fol. Dic. v. 3. p. 251. Fac. Col. No 165. p. 246.

SECT. III.

Presbytery's jurisdiction in designing Glebes.

1710. December 6. POTTER against URE.

LORD FORGLEN reported Mr Michael Potter against Ure of Shargarton and Mr James Ure writer to the signet, his son. Mr Potter being admitted minister at Kippen, and alleging that his glebe wanted half an acre of 4 acres, after measuring, he procures a visit by the moderator and some of the ministers of the presbytery of Dumblane, who for making up his deficient quantity designed half an acre of Shargarton's lands; by which he thinking himself lesed, presented an advocation on reasons of iniquity committed by the presbytery, in designing his ground, which was not kirk-lands, but held feu of the Forresters of Kilmore. *2do*, That they had appointed the entry to his glebe to be 20 feet broad, whereas the 38th act 1661 prescribes that breadth only to highways leading to and from market-towns and sea-ports. *3tio*, That they employed one Walker, never known to be a sworn metster, and who has grossly erred in his measuring, and refused to let try his chain and poles, whether they were above six Scots ells, and how many roods and falls they contained. *4to*, That

No 6.

The designation of a glebe advocated from the presbytery to the Lords upon grounds of iniquity.