

# APPENDIX.

## PART I.

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### GLEBE.

1799. May 16. JOHN LOGAN and Others, against WILLIAM REID.

THE Reverend William Reid, Minister of the Parish of New Cumnock, having proposed to cut some grown trees, which had been planted by his predecessor on the glebe adjoining to the manse, John Logan and some other heritors of the parish obtained an interdict from the Sheriff against his doing so till the question of right should be ascertained.

An advocacy of this judgment was passed of consent, when, on the part of the heritors it was averred, That the trees were in full vigour; that they afforded shelter to the manse; and were an ornament to the country. The minister on the other hand, contended, that they were going fast to decay, and that they rendered the manse uncomfortable, from the damp and smoke occasioned by them. But the parties afterward, waying all specialities, joined issue on the general question, How far the minister of a parish has right to dispose of trees on the glebe *qua* proprietor?

The Lord Ordinary ordered memorials to the Court, in which, and at a hearing in presence, afterward ordered as part of the trials of Lord Probationer Bannatyne, the heritors

Pleaded: The right of a minister to his glebe very much resembles that of a liferenter, the fee being vested in the church, or rather in the heritors, whose right to controul the minister's administration has been frequently recognised.

As a liferenter, the minister has right only to the ordinary uses of the subject, which he must accordingly manage *tanquam bonus paterfamilias*, and so as not to hurt the interest of his successor. On this account, he cannot feu his glebe; 14th May 1791, Minister of Dunkeld, No. 36. p. 5153. nor grant any servitude over it. On the same principle he cannot plant it wholly with trees, nor cut those previously planted.

#### No. 1.

The minister of a parish has right to cut and appropriate trees on the glebe.

**No. 1.** Besides, the glebe is given for the special purpose of affording necessaries to the minister's family; 1572, C. 48. 1592, C. 116. And for this additional reason, he has right only to the ordinary uses of it, among which the production of trees cannot be reckoned. On this account, he has no right to make kelp from sea-ware on the shore of the glebe; 14th November 1781, Reay against Falconer, No. 33. p. 5151. For both reasons, he cannot dig peats, 22d January 1789, Mercer against Minister of Lethendy (not reported,) or marl for sale, 13th November 1794, Minister of Madderty against Heritors, (not reported) and in general, he has no right to the mines and minerals under it.

When the trees on a glebe are cut, their value must belong either to the heritors or the benefice. See Ambler's Chancery Reports, p. 176. 3d July 1753, Knight against Mosely: Court of Common Pleas, 20th Nov. 1797, Jefferson against Bishop of Durham.

Answered: When a glebe is designed, the property of the soil is completely transferred to the successive incumbents, whose right to its productions more nearly resembles that of heirs of entail than any other known in law, and the latter have an unlimited right of cutting wood, where they are not expressly restricted by the entail; 16th February 1757, Hamilton against Viscountess Oxenford, No. 37. p. 15408.

The glebe was indeed intended to supply the minister with grass and corn, but he may raise what crops he thinks proper, or he may convert it into pleasure-ground.

If there are trees on a glebe at the period of designation, the minister's right to remove them, for the purpose of agriculture, will not be disputed. If he plant them himself, he surely may cut them; and as every right descends unimpaired to each incumbent, the same must hold with regard to trees planted by a predecessor. Case, 1790, Heritors of Humbie. (not reported—See APPENDIX, PART II.)

Ministers are prevented from feuing their glebes by special statute, 1572, C. 48. and if they have no right to mines and minerals, it must arise from these not being productions of the soil.

The heritors of a parish are entitled to prevent a minister from dilapidating his benefice, but they have no right to interfere with his management of the surface.

The Court were at first a good deal divided in opinion.

It was observed, That when a minister and heritors disagree as to the propriety of cutting trees on a gebe, the matter must be determined by the Judge Ordinary, and their value, when cut, mortified for behoof of the benefice.

On the other hand, it was said: A minister will not be allowed to commit waste on his glebe; but he has a right of property in it, which entitles him to every benefit which can be derived from it *salva substantia*. No part of the subject remains with the proprietor before designation.

The Lords remitted to the Lord Ordinary, to remit to the Sheriff, with instructions to assolzie the minister, and recal the interdict, and farther found him entitled to expenses.

No. 1.

A reclaiming petition was (31st May) refused, without answers.

Lord Ordinary, *Eskgrove*,  
Alt. *Cathcart*.

For the Heritors, *Williamson, Rae*,  
Clerk, *Pringle*.

D. D.

Fac. Coll. No. 124. p. 282.

\* \* The Court were much divided in opinion on the cause of Mercer against Minister of Lethendy above alluded to. It was simply remitted to the Lord Justice-Clerk Macqueen, Ordinary, and on that account has not been reported in the Faculty Collection. His Lordship, 26th November 1795, pronounced the following interlocutor, which was acquiesced in: " Finds, that  
" the whole marl ought to be dug out, and the surface of the glebe then  
" restored to the proper shape: Finds, That the whole expense of digging,  
" and of afterward putting the surface of the glebe in proper shape, and  
" also the expense of this process, ought to be deducted from the produce  
" of the marl, and the free residue only secured for behoof of the incum-  
" bent: Finds, That the digging, putting the surface of the glebe in pro-  
" per shape, ascertaining and securing the free residue, must be done at the  
" sight of the heritors of the parish and the presbytery, the charger finding  
" caution to the extent of £50. Sterling for due implement of the above  
" particulars, and lodging a bond of caution; therefore removes the inter-  
" dict; suspends the letters *simpliciter*."

D. D.

1799. June 11.

The MINISTER of KINGSBARNs, against DAVID BALFOUR HAY, and Others.

No. 2.

PART of the Parish of Crail was, in 1631, erected into the new parish of Kingsbarns, in virtue of a decree of disjunction, by the High Commission, which declared, " That the heritors of the kirk-land within the new-establish-  
" ed parish of Kingsbarns, and their successors, shall be subject to contribute  
" *pro rata* with the heritors of the kirk-lands within the parish of Crail, sick-  
" like, and in the same manner, as if this division had not been made."

In 1720, the minister of Kingsbarns applied to have a glebe and foggage designed to him; and the presbytery having met for that purpose, the heritors in 1721, by a written agreement, obliged themselves and their successors to pay to the minister and his successors 260. Scots yearly, in lieu of glebe and foggage, according to their valued rents. Fallside belonging to St. Leonard's

Lands are liable to be designed for glebe, as church lands, although the superiority of them only had belonged to the church for a long period before the Reformation; and when at the time of de-