No. 3. lands only "where there has been nae glebe of auld, or where there has been some of auld, yet it be far within the quantity of four acres of land;" and the manner in which the act 1594, C. 202. is worded, clearly indicates that the right of relief applies only to the case where, from their being no old glebe in the parish, or none of sufficient extent, the glebe is designed from other church lands. It is accordingly expressly said by Lord Stair, B. 2. Tit. 3. § 40. that "where old glebes of parsons are designed, there is no relief by other kirk-lands, "except those who had feus of other parts of the same glebe; seeing, by "the foresaid statutes, the feuars of old manses and glebes are to suffer desig-"nation, or to purchase new manses and glebes, so that these old manses and glebes "do not infer relief." And as there is no reasonable ground for distinguishing between a designation made from a *parson's* glebe and one made from a vicar's glebe, it is fair to presume, that the case of Cock, founded on by the pursuer, has been erroneously reported.

The Lord Ordinary took the case to report on memorials.

The Court seemed to be unanimous, that the right of relief must be the same whether the designation be made from a parson's or from a vicar's glebe. But on the question at issue, there was considerable difference of opinion. A majority thought, that the act 1594 gave the pursuer a general relief from the heritors of church-lands; and on that ground, the court decreed in terms of the conclusions of the action.

Lord Ordinary, *Swinton.*
Alt. *Ja. Montgomery.*

Act. *Ja. Gordon, Rose Innes.*
Clerk, *Gordon.*

*D. D.*

*Fac. Coll. No.* 201. *p.* 462.

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1804. *February* 10. LAWRIE *against* HALKET.

**No. 4.**

A minister is entitled to a grass-glebe, though his predecessors have been in use to accept of a sum of money in lieu of it, even for twice the period of the long prescription.

IN the year 1718, the minister of Newburn applied to the presbytery for a designation of a grass-glebe; and a portion of ground was set aside for that purpose. The incumbent did not, however, carry the decree of presbytery into execution, but accepted the sum of £20. Scots in lieu of grass-glebe, which from that time was paid by the heritors, according to their respective valuations.

The Reverend Thomas Lawrie, minister of the parish, in 1801, made an application to the presbytery for a new designation of grass; and a part of a field called Quarrybraes, with a portion of link ground at some distance, was designed. These grounds were the property of Mrs. Ann Halket Craigie of Lawhill, who presented a bill of suspension of the decree of the presbytery, in which she contended, that the minister was not entitled to a grass-glebe at all, and, at any rate, that the portion of the Quarrybraes was not liable to designation.

No. 4.

The Lord Ordinary suspended the letters, so far as related to the ground called Quarrybraes; but with respect to the ground in the links, found the letters orderly proceeded.

Against which judgment, so far as it found the letters orderly proceeded, Mrs. Halket Craigie presented a petition to the Court; and

Pleaded: The right of a minister to a grass-glebe is regulated by the act 1663, C. 21. which gives an alternative of actual possession of grass, or of £20. Scots in lieu of it. After the minister of a parish has once made his election of one alternative, neither he nor his successors can change it by having recourse to the other, and beginning *de novo* as if no such election had been made. Although a minister cannot alienate any fundamental part of his right so as to injure his successors, yet, when the law admits the exercise of a right in two different ways, the minister must be bound by his predecessor's option in regard to it, as much as he is by his option with regard to the situation of the manse or arable glebe, more especially when the interest of third parties is affected by the alteration. The minister of Newburn has enjoyed his right to grass in one way for twice the period of the long prescription, and his successor is therefore precluded from having recourse to the other; Min. of Mertoun, January 19th, 1780, (not reported.)

Answered: The provision in the act 1663, with respect to the sum of £20. Scots, is not alternative, but subsidiary. It was the intention of the Legislature, that ministers should have grass, except in two cases specially mentioned in the statute, in which they were to receive a sum of money in lieu of it. It is a mistake, therefore, to say, that either the heritors or the minister have the liberty of making an election, or choosing an alternative, because the provision of £20. Scots is merely subsidiary, and can only take place when there are no lands in the parish of the description specified in the statute. The minister of Newburn did not receive the £20. in consequence of a decree of presbytery, but in direct opposition to the designation in 1718; and no minister can injure the right of his successors, by voluntarily abandoning the right vested in him by the statute, and sanctioned by the decree of a competent court; Minister of Falkland against Johnston, February 8th, 1793, No. 37. p. 5155.

The Court adhered.

It was observed on the Bench, That the case of Mertoun was not sufficiently attended to when it was decided; that the decision was pronounced by refusing a petition against the Lord Ordinary's interlocutor; and that the minister prematurely acquiesced.

Lord Ordinary, *Dunsinnan.* Alt. *Robertson.* For Suspender, *Douglas.* *R. Dundas*, W. S. Agent, *Geo. Cumin*, W. S. Clerk, *Pringle.*

*J.* *Fac. Coll. No.* 143. *p.* 323.