

No. 5.

gleb, did import, that ministers should have the said grass, or £20. conform to the said act, albeit their glebes which they had formerly, did extend to four aikers, and much more than would be grass, if the same were left lee to that purpose, for a horse and two kine. Some of the Lords were of a contrary opinion, seing, by the Act of Parl. K. Jam. 6. Parl. 18. Cap. 7. where there is no arable land, 16. Souns grass is to be designed for the four aikers which the law appoints to be designed for glebes; and upon the ground foresaid, ministers having 16 souns grass, may pretend to have as much more grass designed to them as will keep a horse and two kine, or £20.

Hattoun, Reporter.

Clerk, Hamilton.

1807. June 3.

MINISTER of NEWTON and PRESBYTERY of DALKEITH, *against* The HERITORS of NEWTON.

No 6.

Right of a minister to work the coal in a glebe.

UNDER the glebe belonging to the minister of the parish of Newton, lies a bed of coal, which the minister proposed to let, at the sight of the presbytery of Dalkeith, for the benefit of himself and his successors. Doubts having occurred as to the legality of this measure, the question was brought into Court by a bill of suspension at the instance of the heritors, and by a declarator on the part of the minister and presbytery.

The Lord Ordinary ordered informations.

The minister and presbytery

Pleaded: Previous to the Reformation, the property of glebes was vested in the ecclesiastics absolutely, and was in every respect at their disposal. After the Reformation, it continued on the same footing; and it became necessary, by various statutes, passed at different times, to prevent the incumbent from acting as unlimited proprietor, and rendering it useless to his successors. Thus they are prevented from feuing, or setting long tacks, 1563, C. 72; from selling or annalzieing them, 1572, C. 48; Stair B. 2. T. 3. §. 40; Ersk. B. 2. T. 10. § 61. Glebes are held of the King as the superior, Stair, B. 2. T. 3. § 40; Bankton, B. 2. T. 8. § 127; Forbes on Tithes, p. 217. The power of a minister over his glebe, is necessarily limited, so as to prevent him from doing any thing which may injure his successors; but he may lawfully do any thing which may benefit them, if it do not injure any third party. The heritors can qualify no injury whatever, but, on the contrary, the benefit will be such as to free them from future claims of augmentation; and it is derived from a substance at present useless, and which is to be obtained without deterioration of the glebe. Thus, it was found, that a minister might dig peats in his glebe for the use of his family; Mercer against Minister of Lethendy, 22d

January 1789, (not reported) and marl for the improvement of his glebe, Minister of Madderty against Heritors, 14th November 1794, No. 35. p. 5153*. which are the acts of a proprietor using, to a reasonable extent, not the fruits alone, but the substance of the subject possessed by him. In Hepburn against Heritors of Humbie, 6th February 1791, (not reported) and Logan against Reid, 16th May 1799, No. 1. APPENDIX, PART I. *i. e.* a minister's right to cut the trees on the glebe was recognized.

Answered: The object of the Legislature, in giving each minister a glebe, was not so much to increase the annual value of the benefice, as to enable them to provide their families with as much of the chief necessaries of life as may be obtained by the cultivation of a small spot of ground adjacent to their dwelling-houses. The size of the glebe, is, in all circumstances, the same; it is in the immediate vicinity of the manse; it is never commuted in money; it cannot be let in feu or long tacks, nor sold, nor rendered unfit for agricultural purposes, for which it was originally designed, however much such acts might be a source of profit to himself and his successors. The right which a minister acquires to his glebe, by the designation of the presbytery, is merely a right to the natural productions of the soil: He is in the situation of a liferenter or administrator; Stair, B. 2, T. 3. § 37. A minister was therefore not permitted to feu one of two glebes he had; Minister of Little Dunkeld against Heritors, 14th May 1791, No. 36. p. 5153; nor allowed to manufacture kelp, Lord Reay against Falconer, 14th November 1781, No. 33. p. 5151; nor to dig marl for sale, Minister of Madderty against Heritors, 14th November 1794, No. 35. p. 5153*. Neither can he be allowed to work coal or other minerals himself, nor to let it to others for that purpose.

“The Lords, (3d June 1807) in the suspension, repel the reasons of suspension; and in the declarator, find, That the minister has right to work the coal in question below his glebe, at the sight, and under the direction of the heritors and the presbytery; and that the value and proceeds of the coal are also to be under their controul and management, for behoof of the minister and his successors; and decern and declare in terms of the other declaratory conclusions of the pursuer's libel, and remit to the Lord Ordinary to hear parties as to the mode of working the coal, to adjust and fix the same, and to do and determine in the cause further for carrying this judgment into effect, as to him shall seem just.”

Lord Ordinary, *Bannatyne*. For Minister, *Boswell*. Agent, *Fra. Brodie*, W. S.
 Alt. *Manypenny*. Agent, *John Smith, jun.* W. S. Clerk, *Walker*.

F. *Fac. Coll. No. 281. p. 635.*

* See note under No. 1. *supra*, in which for “*Mercer against Minister of Lethindy*,” read, “*Minister of Madderty against the Heritors*.”