

1670. *July 20.* The DUKE of BUCCLEUCH *against* SCOTS and OTHERS.

A GLEBE having been designed out of the Duke of Buccleuch his lands within the paroshin of Hassinden, to the minister at that kirk, the Duke he raises a summons against the rest of the heritors of the parish for relieving him of their proportions of the glebe, conform to the act of Parliament, Ja. VI. Parl. 14, act 199.

Against which it was ALLEGED, That though the summons was founded upon the act of Parliament, yet that it subsumed not in the express terms thereof, which bears that relief shall be only due of the other heritors where the hail paroshin, or a great part thereof, are kirk-lands; but so it is, it is neither subsumed, nor can be subsumed, that the hail paroshin of Hassinden, or a great part thereof, are kirk-lands; yea to the contrary, among all thir defenders called, there will not be ten acres of kirk-lands. To which it was ANSWERED, That the great reason of that act of Parliament being, that there was no more reason why the minister's glebe should be designed out of my kirk-lands than another's in the parish, therefore the law allows relief, yea, if there be not sufficient kirk-lands in the parish to complete to the minister four acres for a glebe, then it must be designed to him out of the nearest temporal lands of the parish, and the reason is the same whatever the kirk-lands in the parish be, many or few; and as for the act of Parliament, whatever the conception of it may be, yet a long contrary consuetude has derogated thereto.

The Lords FOUND this derogation relevant.

*2do*, ALLEGED, By the acts of Parliament anent manses and glebes, *viz.* Ja. VI. Parl. 3, Cap. 48; and Parl. 13, Cap. 161, it is appointed that ministers' glebes be first designed out of abbot's lands, then friar's, then vicar's, then any other kirk-lands; but so it is, it is offered to be proven there are abbot's and friar's lands in the parish, the possessors of which lands must be first liable in relief. ANSWERED, *Nulla modo relevat*, unless he condescend upon these abbot lands, and who possesses them.

The Lords FOUND he behoved to condescend.

*Act.* Lermonth.

*Alt.* Pringle and Eleis.

*Advocates' MS. No. 85, folio 83.*

1670. *July 21.* THOMAS SOMERVELL, Tailor, *against* His DEBTORS.

IN this process, Stainbyres among others being convened for payment of a count contracted by him in his father's lifetime, at which time he was but a minor, and the same being referred to his oath; ALLEGED, *Imo*, he was minor, and so could not depone. ANSWERED, That it is not relevant unless he say he is a pupil within the years of tutory. *2do*, That this count being for things furnished to him when he was but an infant, he was noway capable to depone thereon.

This was FOUND RELEVANT.

*Act.* Falconer.

*Alt.* Lockhart.

*Advocates' MS. No. 86, folio 83.*