1745. *January* 3. MINISTER of Kilwinning *against* GLASGOW.

No. 3. THE Minister of Kilwinning pursued for designation of grass, or L.20 in lieu of it, in terms of the act 1663. As all the kirklands near the manse or glebe were arable or garden ground, the Presbytery decerned in the L.20, which they laid on one Glasgow, as nearest heritor of kirk-lands; and there being about 200 small heritors of kirk-lands in the parish, which made it difficult and expensive for him to operate his relief, he brought the question before us by suspension. By a map of the ground, it appeared that there were several heritors that had kirk-lands near both manse and glebe, some nearest the one, some nearest the other, and some nearest the offices, as barn, byre, stable, &c. and the difference perhaps is only a few feet or ells, and in some of them only a corner getting out towards the glebe, or manse, or offices; and had all these grounds been grass grounds, it would have been difficult to determine precisely in terms of the act whose grounds to design; but as they were none of them grass grounds, the question was, Whether the L.20 in place of grass should wholly be laid on the nearest, reserving his relief, or if on the whole heritors proportionally? And if on the nearest, then whether on the nearest to the manse, the glebe, or the offices? And if on the whole heritors, then whether on the whole heritors of kirk-lands, or temporal lands also? And if this last should carry, then whether the heritors of temporal lands had relief of those of kirk-lands? The Court were much divided in their opinions, and some *(inter quos ego)* very doubtful; however, it carried to find all the heritors, whether of kirk-lands or temporal lands, liable, which did not seem founded on the act 1663, but upon the rescinded acts 1644 and 1649, and what we were told of the custom since that time; but as none of the heritors of either kirk-lands or temporal lands were in the field but Glasgow alone, they could not decide the question anent the relief to the heritors of temporal lands, and therefore went no further, but suspended the presbytery-decreet. (See DICT. No. 38. p. 5157.)

1751. *June* 15.

STEEL, Minister of Herriot, *against* Sir WILLIAM DALRYMPLE.

No. 4. THE presbytery having designed a horse and two cows' grass, the Lords, in a suspension, ordered a visitation by two of their number, altered it in part, and gave the Minister some ground not formerly designed, in place of a part of what had been designed by the presbytery, and that without re-

mitting to the presbytery to make the alteration, though the Court has no original jurisdiction in these designations, but only power to review. (See DICT. No. 39. p. 5161.) No. 4.

1751. *June* 20. MINISTER of Dunfermline *against* BLACK. No. 5.

The Court thought, that by arable lands, the act of Parliament did not mean either lands that by industry could be laboured, for all lands are arable in that sense, nor yet lands that were constantly in tillage, for in that sense some of the best grounds would not be accounted arable; but such grounds as of their own nature were arable, and now are or have been in use to be tilled in their course with the other grounds of the farm; and lands not arable, such as were not proper for tillage, and have not been usually employed in tillage; and therefore the presbytery of Dunfermline having designed for grass to the Minister of Dunfermline grounds very valuable, one acre whereof though wet and not proper to be dunged, yet was immemorially laboured and left out in grass alternately with the rest of the farm, that is three years in oats, and three or four years in grass, and the rest of it was in use to be dunged and sowed alternately with bear, pease, and oats, and then laid out in grass as the other acredale lands;—we thought these were in the construction of law, arable lands, and therefore suspended the letters *simpliciter*, reserving to the Minister to insist for his L.20. (See DICT. No. 40. p. 5161.)

See KIRK.

See MANSE.

See NOTES.