

1748. July 27. STIEL *against* SIR WILLIAM DALRYMPLE.

MR STIEL obtained from the presbytery of Dalkeith, within which his parish lies, an allocation of land belonging to Sir William Dalrymple, for the maintenance of a horse and two cows; whereof Sir William having complained on several grounds, and *inter alia* on this, that the land designed was arable land, and that by the act 1663, where the kirk-land was arable, there could be no designation thereof, but L. 20 was to be given by the heritors in lieu of land; the LORDS were of opinion, that by arable was not meant what was capable of culture, for there is no land which is not capable of it; but that by arable was meant land which is in use constantly to be laboured.

*Fol. Dic. v. 3. p. 252. Kirkerran, (GLEBE.) No 1. p. 226.*

No 39.

By arable land is meant, not land which *may be* cultivated, but land which is in use of being laboured.

1755. December 12.

GEORGE DURIE and DAVID BLACK *against* MR THOMSON Minister at Dumfermline.

THE Minister of Dumfermline applied to the presbytery for the L. 20 given by the act 1663, c. 21. where no designation of grass can take place.

The presbytery ordained the heritors of the kirk-lands lying next ewest to the kirk and manse to pay the L. 20.

The heritors suspended, and insisted, that the statute lays this burden upon the whole heritors of the parish, they having relief from the heritors of kirk-lands; and that so was found in the case of Kilwinning, No 38. 5157.

*Answered for the Minister;* The statute surrogates the L. 20 in place of the grass; and from the words of it the same persons are liable in both, and in the same manner. In the case of Kilwinning, there were none but kirk-lands within the parish.

THE LORDS found, That the L. 20 is payable out of the kirk-lands of the parish of Dumfermline, and that the nearest heritor of the said kirk-lands, is immediately liable in payment to the Minister, reserving relief to the said heritor from the other heritors of kirk-lands.

Charger, *M Intosh.*

Suspender, *Ferguson.*

Clerk, *Forbés.*

*W. S.*

*Fol. Dic. v. 3. p. 252. Fac. Col. No 171. p. 254.*

No 40.

The money to which a minister is entitled in lieu of grass, is payable by the heritor of the nearest kirk-lands, but he has proportional relief from the proprietors of the other kirk-lands in the parish.