

No 29.

*Answered* for Mr Duff; The powers now asserted to belong to presbyteries cannot be supported upon the statute 1593. That statute plainly refers to those parishes where any, or all of the privileges therein mentioned had been acquired by prescription; for if, independent of use and wont of auld, that is, of immemorial possession, every minister could have demanded a designation of fuel, he must, upon the same principles, have been equally entitled to insist for a designation of pasturage; but that this was not the case, is obvious from the subsequent statute in 1663, passed many years after, and empowering presbyteries to design grass glebes, or pasturage for a horse and two cows.

Upon the construction of the statute 1593, contended for by the minister, this last provision would have been superfluous; and indeed the same plea has been already over-ruled by the Court in the case of the minister of St Martin's, *anno* 1763.

'THE LORDS found, that the presbytery were incompetent judges, and that their decree is *funditus* null and void.'

For the Minister, *M<sup>r</sup> Queen.* Alt. *Lockhart.* Clerk, *Ross.*

G. F. *Fol. Dic. v. 3. p. 253.* *Fac. Col. No 89. p. 162.*

\* \* \* This case is referred to in No 3. p. 5123.; but there is another case of the same date, viz. Heritors of the parish of Elgin against Troop, *voce* MANSE, which appears to be the one alluded to; only the date, not the names are mentioned in the Faculty Collection.

No 30.  
Ministers are not entitled to pasture their cattle in church-yards.

1778. December 2. HUGH HAY *against* ANDREW WILLIAMSON.

HAY and Low, two heritors in the parish of Arngask, brought an action before the Sheriff of Fife, against Andrew Williamson, minister of the parish, concluding, *inter alia*, that he should be decerned to desist from pasturing his cattle in the church-yard in all time coming. The Sheriff found, 'That he was only entitled to cut the grass in the church-yard, but not to pasture his bestial thereon;' and discharged him from doing so thereafter. The defender, in a bill of advocation, *alleged*, that it was the general practice over Scotland for ministers to feed their cattle in the church-yard.

*Answered* for the heritors; The law does not allow parish church-yards to be put to any use but that of the interment of the dead. In every other respect they are *extra commercium*; and the minister has no more right to feed his cattle in them than he has to plow them up, and raise a crop out of them. THE LORD ORDINARY refused the bill so far as it respected this article.

THE COURT, upon advising a reclaiming petition and answers, adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Braxfield.* Act. *D. Grame.* Alt. *Robertson.* Clerk, *Orme.*

*Fol. Dic. v. 3. p. 253.* *Fac. Col. No 47. p. 81.*