1756. *February* 27. HODGES *against* Mr BRYCE, Minister of Kirknewton.

No 41.
Ground may be assigned to a minister for grass, tho' it has been in use of being ploughed for three years, and lying in grass three years alternately.

THE presbytery of Edinburgh designed outfield, which had been in the constant use of being ploughed, and lying in grass alternately, for the minister's pasturage.

Alleged for the Heritors, in a suspension; Arable land cannot be designed. The statute 1663, c. 21. ordains L. 20 Scots to be paid yearly, if there be no kirk-lands lying near the minister's manse, 'or if the said kirk-lands be arable 'land;' and this matter was so determined, Steele against His Parishioners, No 7. p. 5131.

Answered; The ground designed is bare, with a large rock in the middle of it; and, as it has confessedly been in use to lie sometimes in lee, it might be designed. The construction which the heritors put upon the act goes too far; few ministers would be entitled to grass, if no ground could be designed, any part of which is arable. The decision from Fountainhall does partly support the designation. It was found, "That the heritors must not *in æmulationem* till up that which was in use to be lee, since they so must leave nothing for the minister but moss, muir, hills, or rocky ground, to the defrauding the good design of the law, and the minister's manifest prejudice."

"THE LORDS refused the bill."

Act. *W. Wallace.* Alt. *D. Dalrymple.* Clerk, *Home.*

W. S. *Fol. Dic. v.* 3. *p.* 252. *Fac. Col. No* 192. *p.* 284.

1778. *June* 26. CHARLES GRIERSON *against* JOHN EWART.

No 42.
By arable lands in the statute 1663, are meant lands in a continued state of cultivation, tho' bearing occasionally crops of grass, and not constantly under plough. The condition of the lands, when the designation is required, not their ancient state, is to be considered.

THE presbytery of Dumfries, upon the application of John Ewart, minister of Troqueer, designed to him nine acres of kirk-lands, belonging to Grierson, for minister's grass, on the statute 1663, c. 21.

Grierson brought a reduction of the presbytery's decreet on this ground: That the lands designed fall within the exception of the act 1663: 'That, if 'there be no kirk-lands lying near the minister's manse, out of which the grass 'may be designed; or, otherwise, if the said kirk-lands be arable lands; in 'either of these cases, ordain the heritors to pay the minister, and his succes-'sor, yearly, L. 20 Scots for the said grass.'

The lands in question are arable lands; they were inclosed with dyke and ditch 20 years before the designation, and have been producing either crops of grain, or rye-grass and clover; consequently they cannot be designed.

Answered for the defender; By 'arable lands,' in this statute, are not to be understood all lands capable of being ploughed. The extent of this exception in the statute is explained by the mode of agriculture at the time. No lands, in those days, got the name of arable, but such as were kept constantly under

the plough; and these were likewise called crofting lands; in contradistinction to which, were outfield grounds, ploughed at distant intervals of time. The object of the statute was only to exeem the crofting lands; and such is the interpretation the Court has put upon it; Steel *contra* Dalrymple, No 39. p. 5161.; Hodges *contra* Bryce, No 41. p. 5162. As the lands designed are not crofting, or arable lands, in this sense of the word, they do not fall within the exception of the statute. No 42.

These lands were entirely outfield 20 years ago, and at that time confessedly liable to have been designed. Though, by late improvements, they are brought into better cultivation, the minister ought not to be deprived of the right he then had to a designation of grass out of them.

THE COURT were of opinion, That, by arable lands, are to be understood lands in a continued state of cultivation, though bearing crops of grass, and not constantly under the plough. That the question, Whether lands fall within the exception of arable in the statute, is to be determined by their condition at the time when the designation is applied for, however recently such lands may have been improved.

THE COURT "sustained the reasons of reduction of the grass-grounds."

Act. *Rae.* Alt. *Crosbie,*

Fol. Dic. v. 3. *p.* 252. *Fac. Col. No* 24. *p.* 39.

1784. *June* 23.

The HERITORS of the Kirk-lands in the Parish of PEEBLES, *against* WILLIAM DALGLEISH.

No 43.
A presbytery having allotted to a minister, for his grass, a piece of land, which tho' not in tillage, was frequently covered with water, and so unfit for pasturage, and which had previously been feued to the inhabitants of a burgh in the vicinity of which it lay; the Lords sustained the designation.

THE ministers of Peebles having never obtained a designation of pasturage, in terms of the statute 1663, c. 21. the presbytery allocated to Mr Dalgleish, the present incumbent, a piece of land called the Kirkmyre, formerly part of the vicar's glebe, which, on the eve of the Reformation, had been feued out in small divisions to the inhabitants of the burgh.

As the spot thus chosen by the presbytery was marshy, and often covered with water for a great part of the winter season, it had never been in tillage; nor was it frequently used in pasture, the grass which grew upon it having been either cut green or made into hay.

In a reduction of the decreet of the presbytery,

The Heritors *pleaded*; The design of the statute 1663 was not so much to add to the income of the person serving the cure, as to accommodate him with a spot of ground, on which a horse for his own use, and two cows for that of his family, might feed. For this reason, the allocation is to be made of pasturage-grounds; and in case of there being within the parish no kirk-lands of that kind, the heritors are to make payment annually to the minister of L. 20