ject to any relief, because he holds his lands of the College of St Andrew's in feu, to which College the same is mortified, before the act of Parliament 1594, which appoints relief; and so belonging to the College, they cease to be kirk-lands; this allegeance was also repelled, and found that these same lands, albeit mortified to the College, yet cease not to be kirk-lands, but that they ought also to pay their part of the relief, for they were feued to the defender for a small feu-duty of L. 8 only.

Act. ——. Alt. *Nairn.* Clerk, *Hay.*

Fol. Dic. v. 1. *p.* 353. *Durie, p.* 754.

No 32.
lands. One of the heritors who held of a college, to which his lands had been mortified, claimed exemption from the relief, alleging his lands were no longer kirk-lands; but his plea was repelled.

SECT. IX.

Consequences of the Possession of the Glebe.

1781. *November* 14.

LORD REAY *against* The Reverend MR ALEXANDER FALCONER.

LORD REAY insisted to have it found and declared, That Mr Falconer, as minister of Edrachilles, had no right to the sea-ware upon the shore of his glebe, except for the purpose of manuring his land and feeding his cattle; but that the sole and exclusive privilege of manufacturing said sea-ware into kelp belonging to his Lordship, in virtue of ancient infeftments.

Pleaded for the pursuer; The parish of Edrachilles is part of the Reay estate; and, about fifty years ago, when it was disjoined from the parish of Durness, Lord Reay agreed that a very extensive tract of land should be designed and allocated as a glebe for the minister. But in this designation, although the boundaries are distinctly marked, there is no mention of shores, nor any clause upon which a right to sea-ware, as part and pertinent, can be founded. The original right therefore of the family of Reay still continues, and must be sufficient to exclude any right competent to the minister in virtue of the designation above-mentioned.

The view of the Legislature in making this provision for the clergy, evidently was, that such of them as were situated in the country might have conveniencies about them, which perhaps no addition of stipend could otherwise supply. This is the idea which runs through most of the statutes relative to glebes, as appears both from the situation and extent thereby prescribed; *vide* acts 1563,

No 33.
A minister was found to have no right to the sea-ware on the shore of his glebe, for the purpose of making kelp; that right remaining annexed to the lands out of which the glebe had been designed. In this case the proprietor of the barony did not contend for depriving the minister of the use of the sea-ware for manuring his glebe.

No 33. c. 72.; 1572, c. 48.; and 1606, c. 7. But to suppose that, under that denomination, any right to sea-ware, for the purpose of manufacturing it into kelp, can be comprehended, is equally inconsistent with the design of the provision, and with the dignity of the clerical character.

The pursuer, however, though he doubts the minister's right to it, does not mean to deprive him of the privilege of using the sea-ware in the way of manure and pasture. In the exercise of that privilege Mr Falconer has always been freely indulged. It is by no means incompatible with the right now contended for, and is not struck at by the present action.

Answered; Whenever lands are legally designed as a glebe for the parish-minister, the former heritor is completely divested of them. The property from that moment belongs to the church, and the superiority goes to the Crown, which accordingly has right to the liferent-escheat of the incumbent lying year and day at the horn; act 1572, c. 49. The designation therefore of a glebe is equivalent to an infeftment, and is equally capable of carrying whatever is possessed, as part and pertinent of the lands.

Neither is this general right at all limited by the terms of the designation in question. It is conceived in the usual form, and conveys to the minister of Edrachilles as full and ample a right as any minister in Scotland has to the glebe which he possesses. He is therefore entitled to the sea-ware upon his own shore as part and pertinent; and is not restrained by the nature of his right from the free use of this, more than of any other part of his benefice.

Observed on the Bench; The designation of a glebe is like a bounding charter. Here the designation makes no mention of shores; and the minister is circumscribed by the terms of his own right.

The Court, therefore, adhered to the interlocutor of the Lord Ordinary, who had 'decerned in terms of the declarator.'

Lord Ordinary, *Hailes.* Act. *Honyman.* Alt. *Robertson.* Clerk, *Home.*

Law. *Fol. Dic. v. 3. p. 251. Fac. Col. No 2. p. 2.*

1791. *November* 22. Anderson and Others, Petitioners.

No 34. A minister is entitled to have half an acre of ground for the stance of his house, stable, barn, byre, and garden, and what he wants of that quantity may be designed to him by the presbytery, out of any lands contiguous to his manse; whether church-lands or others; the proprietor of such lands having his relief against the whole heritors of the parish. *See* Appendix.

Fol. Dic. v. 3. p. 253.