an alteration of the judgment; and upon advising the petition, with answers, the Lords altered the interlocutors complained of; and found, "that in the "circumstances of this case, the minister has right to have his glebe designed "out of lands lying near to his manse, whether they be kirk-lands or temporal "lands; but found, that the heritor whose lands shall be so designed, is entitled "to a proportional relief from the other heritors in the parish, liable in pay-"ment of the £60. Scots hitherto received by the minister in lieu of a glebe." No. 2.

Lord Ordinary, *Monboddo*. For the suspender, *Solicitor-General Blair, Rolland, D. Douglas*. For the Heritors of Temporal Lands, *H. Erskine, D. Cathcart*. For the Minister and Colonel Monypenny, *M. Ross, W. Robertson, Monypenny*. For the College, *Ed. and Jo. M'Cormicks*. Clerk, *Home*.

D. D. *Fac. Coll. No.* 127. *p.* 288.

1800. *December* 2. WILLIAM LAIDLAW *against* ANN ELIOT.

No. 3.
A minister having got a grass-glebe designed from lands which were of old part of the vicar's glebe, the proprietor's relief found not to be confined to the other feuars of the vicar's glebe, but to extend to all the heritors of church lands in the parish.

PART of the old vicar's glebe of Peebles having been designated to the minister of that parish for a grass-glebe, William Laidlaw, the proprietor, brought an action for proportional relief agaist the other heritors of kirk lands.

In this action appearance was made for Ann Eliot, a proprietress of church lands, who contended, that Laidlaw's right to relief ought not to extend to the whole heritors of church lands, but should reach only to the other feuars of the vicar's glebe.

Answered: After the reformation, the protestant minister or reader, by the statutes 1563, C. 72. and 1572, C. 48. was declared to be entitled to a certain portion of the glebe of the former parson or vicar. By the act 1593, C. 165. where there was no old glebe, all the other kirk lands in the parish were made liable to designation. And by 1594, C. 202. it is declared in general terms, that "the feurs, possessors, and tacksmen, out of whose lands the manses or glebes "are designed, shall have relief of the remanent parochiners, wha are feuars, "possessors, and tacksmen of kirk lands, lying within the said parochin *pro* "*rata*." Although the old glebe, therefore, is still primarily liable to designation, yet, in terms of this clause, the proprietor is entitled to a general relief from all the heritors of kirk lands; and the rule is a just one, as all of them have been equally benefited by the ancient inheritance of the church. It was accordingly so decided 12th February 1635, Cock, No. 32. p. 5150. See also Stair B. 2. T. 3. § 40. 3d January 1745, Fergusson against Glasgow, No. 38. p. 5157; 12th December 1755, Dury and Black against the Minister of Dunfermling, No. 40. p. 5161.

Replied: The act 1593, C. 165. allows the designation out of the church

No. 3. lands only "where there has been nae glebe of auld, or where there has been some of auld, yet it be far within the quantity of four acres of land;" and the manner in which the act 1594, C. 202. is worded, clearly indicates that the right of relief applies only to the case where, from their being no old glebe in the parish, or none of sufficient extent, the glebe is designed from other church lands. It is accordingly expressly said by Lord Stair, B. 2. Tit. 3. § 40. that "where old glebes of parsons are designed, there is no relief by other kirk-lands, "except those who had feus of other parts of the same glebe; seeing, by "the foresaid statutes, the feuars of old manses and glebes are to suffer desig-"nation, or to purchase new manses and glebes, so that these old manses and glebes "do not infer relief." And as there is no reasonable ground for distinguishing between a designation made from a *parson's* glebe and one made from a vicar's glebe, it is fair to presume, that the case of Cock, founded on by the pursuer, has been erroneously reported.

The Lord Ordinary took the case to report on memorials.

The Court seemed to be unanimous, that the right of relief must be the same whether the designation be made from a parson's or from a vicar's glebe. But on the question at issue, there was considerable difference of opinion. A majority thought, that the act 1594 gave the pursuer a general relief from the heritors of church-lands; and on that ground, the court decreed in terms of the conclusions of the action.

Lord Ordinary, *Swinton.*
Alt. *Ja. Montgomery.*

Act. *Ja. Gordon, Rose Innes.*
Clerk, *Gordon.*

D. D.

Fac. Coll. No. 201. *p.* 462.

1804. *February* 10. LAWRIE *against* HALKET.

No. 4.

A minister is entitled to a grass-glebe, though his predecessors have been in use to accept of a sum of money in lieu of it, even for twice the period of the long prescription.

IN the year 1718, the minister of Newburn applied to the presbytery for a designation of a grass-glebe; and a portion of ground was set aside for that purpose. The incumbent did not, however, carry the decree of presbytery into execution, but accepted the sum of £20. Scots in lieu of grass-glebe, which from that time was paid by the heritors, according to their respective valuations.

The Reverend Thomas Lawrie, minister of the parish, in 1801, made an application to the presbytery for a new designation of grass; and a part of a field called Quarrybraes, with a portion of link ground at some distance, was designed. These grounds were the property of Mrs. Ann Halket Craigie of Lawhill, who presented a bill of suspension of the decree of the presbytery, in which she contended, that the minister was not entitled to a grass-glebe at all, and, at any rate, that the portion of the Quarrybraes was not liable to designation.