May 14, 1827. Glendonwyn appropriated L.10,000 out of it to the respondents, without any condition as to whether Mr Scott should implement his part of the contract or not. They were, therefore, vested in the L.10,000; and, as special legatees in the one view, or as creditors in the other, were entitled to be preferred.

The House of Lords, in each of the cases ordered and adjudged, 'That the said interlocutors therein complained of, be 'and are hereby affirmed; and it is further ordered, that the 'appellants do pay, or cause to be paid, to the said respondents, 'the sum of L.100 for their costs, in respect to said appeal.'*

Napier's Authorities.—(3.)—Stair, 328; Mack. 233; 1 Bell, 43; Frog, Nov. 25, 1735, (4246); Lillie, Feb. 24, 1741, (4267); Douglas, July 7, 1761, (4269); Cuthbertson, March 1, 1781, (4279); Dict. Fiar Ab. and Lim. and Prov. to Heirs, &c.

Scotts' Authorities.—(2.)—Bell's Cases, p. 55; Newlands, July 9, 1794, (4294); M'Intosh, Jan: 28, 1812, (F. C.);—Gerran, June 14, 1781, (4402); Signet Cases, p. 56.—(4.)—1 Bank. 9, 18; 3 Ersk. 8, 2; 3 Ersk. 3, 91; 3 Stair, 4, 2; 1 Stair, 20, 5; 3 Ersk. 3, 91; 1 Bell, 243; Gartland, 8 March 1632, (915); Clark, June 30, 1675, (917); Meldrum, 11 Dec. 1667, (928): 1 Stair, 5, 6.

SPOTTISWOODE & ROBERTSON, J. DALLAS, and J. CHALMERS, —Solicitors.

No. 42. **Rev. ROBERT MOORE, Appellant.—*Connell—Keay—Stuart.***
ALEXANDER HEPBURN MURRAY BELCHES, Esq. Respondent.—*Spankie—Campbell.*

Grass Glebe.—Stat. 1663, *c.* 21.—A Presbytery having designed, under the above statute, to the minister of the parish a grass glebe out of kirk lands belonging to one of the heritors, whose mansion-house had formerly been built on them; and the Court of Session, (altering the judgment of the Lord Ordinary,) having found that the heritor was entitled to object to those lands being so designed; and that the minister was bound to accept a glebe out of other lands, which were not kirk lands, but which

---

* After the death of Lord Gifford, and the resignation of the Lord Chancellor Eldon, the Lord Chief-Baron Alexander, and the Master of the Rolls, Sir John Leach, were appointed to hear appeals from Scotland; but as their Lordships had not the privilege of delivering their opinions in the House of Lords, the Reporters have been unable, in several Cases, to give the grounds on which the judgments were pronounced, except so far as they could ascertain them from the observations which occasionally fell from their Lordships in the course of the debate at the bar. Their Lordships generally communicated their opinions in a private room to the parties; and of which the Reporters have, in some instances, obtained notes.

The above case of Napier was heard by the Lord Chief Baron.

were alleged to be equally as good and convenient as those designed by the Presbytery, and that he was not entitled to a compensation for the want of a glebe during the litigation, Held, (reversing the judgment of the Court, but affirming that of the Lord Ordinary,) That the minister was entitled to have the glebe designed out of the kirk lands, and to a compensation for the want of it.

THE Presbytery of Dunbar designed four and a half acres of the kirk lands of Blackcastle, the property of Alexander Hepburn Murray Belches, Esq. of Invermay, as a grass glebe to the Rev. Robert Moore, minister of the parish of Oldhamstocks. To this designation Mr Belches objected, and suspended, on various grounds; but principally because the lands designed were the site of the old manor-house of Blackcastle, now in ruins, and offered in lieu thereof a grass glebe at some distance, which he alleged was equally good and convenient. The case having come before Lord Gillies, his Lordship at first sustained the reasons of suspension, but on a representation by Mr Moore, he altered and repelled the reasons. Against this judgment Mr Belches represented, and having alleged that the lands which had been designed were arable and not pasture lands, his Lordship remitted to Mr Turnbull, a person of skill, to inspect them, which he accordingly did, and reported that they were pasture lands, and that it would require six acres of them to pasture a horse and two cows. Objections having been made by Mr Belches to this report, Lord Meadowbank, (before whom the case had now come,) on the 13th of May 1823, approved of the report, repelled the objections, found the letters orderly proceeded, and expenses due, and at the same time issued this note of his opinion :—'The lands in question have undoubtedly been 'subjected to cultivation, but that only to render their being 'employed as grass lands more beneficial. They are, therefore, 'according to the admissions of the suspender, exactly in the 'predicament of those which were designed in the case of 'Maule, 18th May 1809; and as to the objection of their lying 'adjacent to the manor-place, the allegations do not appear to 'the Lord Ordinary to be of that description that would autho-'rize the Court to hold that they are to be exempted from the 'burden in question, to which, by law, they otherwise must be 'subjected.'

May 21, 1827.

1ST DIVISION. Lords Gillies and Meadowbank.

Mr Belches having reclaimed, the Court, before answer, appointed him to give in a condescendence 'of the grounds he offers 'to have designed as a grass glebe for the respondent, (Mr Moore,) 'instead of the ground designed by the Presbytery;' and having done so, their Lordships remitted to Mr Turnbull to report 'how far the ground condescended on was adapted, by facility

May 21, 1827. ‘ of access, juxtaposition, and other circumstances of situation, ‘ to be a convenient grass glebe.’ Mr Turnbull having reported that the proposed grounds were suitable, the Court adhered, turned the decree into a libel, and ordained the inspector to report as to the quantity of land requisite for a glebe, and to specify the situation and boundaries thereof. He then reported that there were impediments to designing a grass glebe; and among others, that the lands proposed were completely surrounded by an undivided common. Mr Belches then offered to guarantee a road through the common; and the Court, before answer, remitted again to Mr Turnbull to report as to the quantity, situation, and boundaries, and to line off a road. A report was accordingly made by him, on which he suggested that eight acres of the farm of Woollands, exclusive of certain roads, should be allotted as the grass glebe; reserving to the minister a right to the road leading from Oldhamstocks to the Woollands, and through the undivided common that lay interjected between them. The Court approved of this report, designed, allotted, and set apart the grounds described in said report, ‘ with the ‘ road or access thereto, and lying and bounded as therein spe- ‘ cified and here referred to, to be the grass glebe for the char- ‘ ger the present minister of Oldhamstocks, and his successors ‘ serving the cure of the said parish in all time coming, and ‘ decern and declare accordingly, but find no expenses due to ‘ either party.’

Mr Moore reclaimed, praying the Court to repel the reasons of suspension, or at all events to grant to him a pecuniary compensation for the want of a glebe since the designation by the Presbytery. The Court, however, on the 23d of December, 1825, refused the petition and adhered.*

Mr Moore appealed.

Appellant.—By the act 1663, c. 21, a minister is entitled to have a grass glebe designed to him out of the kirk lands nearest to the manse; and the heritor is not entitled to defeat the enactment by an offer of other lands, not kirk lands, and less convenient in point of situation and in other respects. The object of the legislature was to give an indefeasible right to the minister to such lands as had formerly belonged to the church establishment; and accordingly those lands are first pointed out

* See 4 Shaw and Dunlop, No. 244.

for designation, which had originally been more immediately connected with the parochial cure—and in point of situation 'maist ewest' (nearest) to the church. In the present case, the lands designed by the Presbytery once belonged to the old parsonage of the parish, and are therefore the most eligible under the word and spirit of the statutes. On the other hand, the grounds offered by the respondent, and designed by the Court, are ill calculated for a glebe, and greatly inferior to that designed by the Presbytery. Part of it is a bank, inaccessible to cows and horses—a river intervenes—the access is circuitous, and even the possession of that access is precarious, being through an undivided common, separating the proposed glebe from the manse; and it is quite uncertain whether the portion bisected by the road, will, on division, fall to the share of the respondent. It is plain the respondent cannot guarantee a road through an undivided commonty, nor could the Court guarantee it. The objection that the lands designed by the Presbytery contain the site of the old manor-house of the parsonage of Blackcastle, is neither correct nor relevant. There are only a few stones and a shattered staircase, the remains of the parsonage-house, which has been a ruin for one hundred and fifty years. There are no trees round them. The spot is in the extreme corner of the estate, and there is neither the inducement of beauty nor convenience to lead a proprietor to build upon it for a family residence. But even if the place were better suited for that purpose, this is not a ground of exception that can be listened to. At all events, the appellant was entitled to compensation. The Presbytery could not have designed other lands than they did, and the lands substituted by the Court, at the respondent's request, were not offered till long after the commencement of the litigation, and even then the substitution was made for the respondent's own convenience.

May 21, 1827.

Respondent.—The glebe designed by the Presbytery lies within the old garden wall, which encloses the outer park of the castle, and comes close to its front. This is an insuperable objection to its designation. It is no answer that the castle is in ruins. That does not render the situation less suitable for a mansion-house, either consisting of a new erection, or the old house repaired. In the substitution made by the Court, the appellant obtains a designation perfectly suitable for the purpose in view. The circuit of the road is trifling. The road itself is guaranteed, and has been lined off. Even although there

May 21, 1827.

were within the space an inaccessible bank, still a portion of ground, sufficient to pasture two cows and a horse, has been measured off, and the distance from the manse is not inconvenient. The danger of being disturbed in possession of the road through the common is quite imaginary. Compensation is never given to a clergyman except where he has been successful in the litigation which the heritor has struggled to protract. Here the appellant only gets what long ago was offered to him, and what he ought never to have rejected. It is of no consequence that the designation by the Court does not embrace kirk-lands. The object of the statute was to prefer kirk-lands, only if there were no valid and sufficient objection to their being allotted; not to make it peremptory on the Presbytery to allot them and no others, under any circumstances, and however inconvenient and injurious to the heritor.

The House of Lords ordered and adjudged, 'That the said 'several interlocutors complained of in the said appeal be, and 'the same are hereby reversed; and it is farther ordered, that 'the interlocutor of the Lord Ordinary, dated the 13th May, '1823, be, and the same is hereby affirmed; and it is further 'ordered, that the cause be remitted back to the Court of Session, to fix the time for the appellant's entry to the glebe designed by the Presbytery; and it is declared, that the appellant is entitled to a pecuniary compensation for the want of a 'glebe; and it is further ordered, that the said Court of Session do fix the time from which the same shall be calculated, 'and do ascertain the amount of such compensation, and proceed therein as shall be just.'*

Appellant's Authorities.—1663. c. 21.—1572. 2. 48.—1587. c. 29.—1593. c. 161. Cuningham, Jan. 6, 1594 (5135).—1594. c. 202,—Earl of Galloway, June 12, 1823, (2. Shaw and Dunlop, No. 373.)—Dundas, Feb. 3, 1808, (not reported.)—A branch of the same cause, Dec. 6, 1805, (Fac. Coll.)—2. Ersk. Inst. 10. § .—Steele, July 27, 1748 (5161.)—Hodges, Feb. 27, 1756 (5162.)

Respondent's Authorities.—Marshall, June 20, 1605 (8495.)—Connel's Law of Parishes, p. 423.

SPOTTISWOODE and ROBERTSON,—RICHARDSON and CONNEL, —Solicitors.

---

* The Lord Chief Baron heard this appeal.