

No 10. question arose, whether the Lady as liferenter was liable for any part of the expenses, or if the heritor was liable for the whole; for whom it was *alleged*, That the charge being upon the act 21st, Parliament 1663, anent manses and glebes, it bears expressly, 'Where there are no sufficient manses, the heritors of the parish shall build sufficient manses;' and this act being a statute *stricti juris*, cannot be extended to liferenters, unless it were expressed. It was *answered*, That the benefit of the ministry redounding to liferenters during their life, justice requires that they should bear a part of the burden; for, if the land were to be adjudged in consideration of the value, the liferent would be stated according to the worth and age of the liferenter, to a third, fourth, or some other proportion; and therefore, according to that proportion, she should be liable in this burden as well as in other burdens; likeas, by the 199th act, Parliament 14th, King James VI, where manses are designed, relief is ordained against the feuars, tacksmen, and possessors of the parish, and therefore, though by the last act, heritors be ordained to build, yet they may crave relief against liferenters as possessors. It was *replied*, That the former order of manses is wholly changed, for the building is laid only upon the heritors, and the upholding, and consequently the reparation, upon the incumbent, and in the vacancy out of the vacant stipends; but, whatever might be pretended in equity for making a statute to burden liferenters for some share for building manses, yet where the matter is fixed by a statute, the Lords ought to acquiesce therein, and cannot extend it *de casu in casum*.

THE LORDS found the liferenter free of any burden of the building of the manse.

*Fol. Dic. v. 1. p. 566. Stair, v. 2. p. 706.*

\* \* \* Fountainhall reports this case :

THE LORDS found the 21st act of Parliament in 1663, anent manses, did not make Lady liferenters liable to contribute to the building of manses; and they would not extend the act of Parliament, though it relate to act 199th, Parliament 14th, James VI. which is fuller; *statuta* being *stricti juris*, and *incommodum non solvit argumentum*.

*Fountainhall, MS.*

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No 11. 1685. March 25. MINISTER of Kirkaldy *against* His PARISHIONERS.

THE LORDS found a burgh liable for reparation of the Minister's manse, although it was a burgh royal, because it had a manse and glebe and landward parish, and so fell not under the act 21st, Parliament 1663.

In a pursuit at the instance of the first minister of Kirkaldy against the heritors of the parish of Abbotshall, which had been disjoined from Kirkaldy, for a proportion of the expense of repairing his manse, upon this ground, That the pursuer's stipend is wholly paid out of the teinds of Abbotshall, of which the defenders are titulars, and upon them also must the burden of the manse lie; the defenders were found not liable for reparation of the manse, having the manse of their own parish to support.

*Fol. Dic. v. 1. p. 566. Fount. Harc.*

\* \* This case is No 2. p. 5121. *voce* GLEBE.

1695. December 6. DOUGLAS against The HERITORS of the Parish of Mannor.

IN the double pointing about the vacant stipends of the church of Mannor, between Lord William Douglas, patron, who, with concurrence of the Privy Council's act, had destinate the same for building a bridge within the parish; and the heritors and presbytery, on the other hand, who had made an allocation of the same towards repairing of the church and manse, and *alleged* against the patron's destination, That he had lost the same, because by the act 18th, Parl. 1685, anent vacant stipends, patrons were bound to make the application yearly, which he had not done, but suffered four years to run on before he made his nomination; *Answered*, By the late act 1690, c. 23. abolishing patronages, he is not restricted to a yearly application. THE LORDS found, since he was not interpellated by the heritors or presbytery to apply, but had made the first application himself, and that to an incontroverted pious use within the parish, the one half of the bridge lying within the same; therefore they preferred his nomination. But as to the second point, they found the repairing the manse during the vacancy was a real burden affecting all vacant stipends, by the 21st act of Parl. 1663; therefore the manse behoved to be repaired out of the same; the parishioners proving it was a competent, sufficient, and habitable manse at the death and removal of the last incumbent; for if it was deteriorate in his time, then his representatives were bound to make it up in as good condition as he got it; and found no necessity to burden the heritors to prove it was declared a free manse by an act of the presbytery, but it was sufficient to prove by witnesses that it was in a good condition at the beginning of the vacancy; and appointed a visitation by tradesmen how much it will now require to make it as sufficient a manse as it was then. See PATRONAGE.

*Fol. Dic. v. 1. p. 566. Fountainball, v. 1. p. 684.*

No 11.

No 12.

Repairing the manse during the vacancy is a real burden affecting all vacant stipends, and the manse must be repaired out of the same, the parishioners proving it was a sufficient manse at the death of the last incumbent.