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of Parliament 1690 continued to be the rule; and as their charity is given there, they are undoubtedly entitled to oversee the application of the poor's money equally with the other heritors; they are in all respects to be considered as heritors in the parish to which they are united, except that their teinds continue to be part of the old benefice.

The Lords suspended the letters.

Act. *R. Dundas*. Alt. *Lockhart*.
Fol. Dic. v. 3. *p.* 399. *D. Falconer*, *v.* 2. *No* 274. *p.* 368.

1750. *June* 30. Thomson *against* The Heritors of Dumfermline.

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Found, that a minister in a royal burgh was not entitled to a manse by designation of the presbytery upon the act 21st, Parl. 1663; reserving to him to insist for a dwelling-house, in any other form that he shall be advised.

Fol. Dic. v. 3. *p.* 398. *Kilkerran*, (Manse and Glebe.) *No* 1. *p.* 342.

*** D. Falconer reports this case:

The first minister of Dunfermline was provided, by a decreet of modification and locality, obtained in the year 1683, to L. 40 Scots, decreed to be paid him by the Magistrates for his house-mail; reserving their relief off the heritors, in so far as used to be paid by them, as accorded; notwithstanding which the minister had continued to levy L. 30 thereof directly from the heritors, as appeared from his possession in 1745, when Mr James Thomson pursued the Town for the whole, and obtained decreet; which decision is observed 15th December 1747, *voce* Prescription.

Mr Thomson afterwards insisted before the Presbytery, for designation of a manse; and the cause was advocated, wherein he *argued*, That the act 72d, Parliament 9th, Queen Mary, on the recital that parsons and vicars had set in feu and long tacks their manses, wherethrough there was no sufficient dwelling for them that served, and should serve at the kirks; enacted that no parson or vicar should set feus or long tacks of the manses or glebes belonging to the kirks, without the Queen's consent; and further, that they that were appointed to serve at any kirk should have the principal manse of the parson or vicar, as should be found sufficient for staiking of them; or that a sufficient house should be bigged to them, besides the kirk, by the parson or vicar, or others having the manses in feu or long tacks. That act 1572, c. 48. for explanation of the act made anent manses and glebes, enacted, 'that the manses pertaining to 'the parson or vicar, maist euest to the kirk, and maist commodious for dwel-'ling, should pertain to the minister.' And act 1592, c. 118. declared the above acts should extend to all abbeys and cathedral kirks, where no other manse or glebe pertaining to parson or vicar, was of before; so that the minister should

have a sufficient manse or dwelling-place within the precinct of the abbey; providing it should be in the option of the abbots, feuars, &c. either to grant a manse within the precincts of their place, or else one lying as euest and commodious to the parish-kirk. By act 31st, Parliament 1644, it was enacted, That if there were no parson or vicar's manse as described by the said statutes, the heritors should build one; and by act 1663, That where competent manses were not already built, the heritors should build.

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By these acts every minister is entitled to have a manse; and whereas it has been alleged by the heritors, the imposition of building manses has only been laid on heritors of landward parishes, but not where the kirk is situated in a burgh; the distinction is not founded in the laws; and it has been ordinary in burghs to pay a certain sum for house-rent, where a manse had not been provided; which custom could only arise from its being understood the minister was entitled to one. Glebes are by law appointed to be designed maist euest to the manse; so that wherever a glebe is due, a manse is, and a glebe is due, wherever any part of the parish consists of landward, 17th December 1664, Anderson *contra* his Parishioners, No 1. p. 5121. and 22d Jan. 1631, Minister of Inverkeithing, No 4. p. 5124. as is the case of this parish; though if it were not, it does not follow that the minister could not have a manse, because he could not have a glebe. This is the kirk of the abbey; and the minister is entitled to a manse within the precincts, and ought not to be excluded from claiming it, on account of the decreet obtained by his predecessor; as the Commissioners were not competent Judges to the designation of manses.

Pleaded for the Heritors, The acts preceeding the 1644 lay no burden upon them of building manses, but the minister is only thereby entitled to the parson's or vicar's, or to a lodging in the abbey. The act 1644 itself does not lay this upon them; but only empowers the presbyteries to design; and it was by act 44th, Parliament 1649, heritors were obliged to build, which related only to heritors of landward parishes; and therefore, by a subsequent clause, it is appointed that burghs, and the heritors of the landward part of the parish, should provide competent dwelling places for their ministers. On the rescinding of these two acts at the restoration, the act 21st Parliament 1663 was made, which revives almost *verbatim* the first clause of the act 1649, calculated for building manses in country parishes, but omits the other clause; so that by comparing the acts, there is plainly no foundation for building or designing a manse to a minister within a burgh.

Supposing any claim competent to him, the designing a manse would be impracticable within burghs, as they could not take any person's house, but it could only be for allowance to provide him one; and this pursuer must be satisfied with the sum allotted to his predecessor, for which the Commissioners were competent, as it was really an increase of stipend given on that consideration; besides there was produced by himself before the presbytery, an agreement in 1558, between the minister the town and heritors for that purpose;

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and the Commissioners, at that time frequently on consent, determined things they would not otherwise have been competent to.

Several of the Lords were of opinion, that the second clause of the act 1649 was left out of the act 1663 of purpose; so that the pursuer had no title to a manse; but they agreed that the modification of L. 40 Scots, and the minister's accepting of the same, made it no question.

The Lords, 19th June, found that the minister in this case was not entitled to a manse, and that the presbytery had no power to design him one; and this day, on a bill insisting that he was entitled to a house within the precincts of the abbey, adhered, with this explanation, that he was not entitled to have a manse designed him on the act of Parliament 1663; reserving him to claim to be furnished with a house on any other ground as accorded.

Reporter, *Elchies*. Act. *Lockhart et Dalrymple, sen.* Alt. *Ferguson.*

D. Falconer, v. 2. No 144. p. 169.

1751. *December* 3. M'Aulay *against* Auchinleck and Kid.

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A private party had left by settlement a house in a burgh, for the residence of the minister. Having gone into disrepair, the present incumbent brought an action against the executors of the former one, for the expense of refitting. Assoilzied.

Edward Little skipper, burgess of Queensferry, in the year 1650, mortified, gave, and granted to Mr John Primrose, then minister of the gospel at Queensferry, and his successors in office, as a constant manse, his tenement of houses in the said burgh, which he declared to be in satisfaction of his bond of L. 8 Scots yearly, which he had granted for augmentation of the minister's stipend.

Mr Kid was ordained minister at Queensferry in the year 1710; and upon his death, Mr Archibald M'Aulay was ordained in the 1749 or 1750, who finding the said house ruinous at his entry, brought a process against the Representatives of Mr Kid the former incumbent; concluding that they should be decerned either to put the tenement in a tenantable condition, or to make payment to the pursuer of L. 150 Sterling, or such other sum as might be necessary to put it in repair.

Upon advising a proof, which in this case had been allowed by the Ordinary upon the present condition of the tenement, and the condition it was in at Mr Kid's entry, it was by several of the Lords doubted, whether in this case there lay any action against the Representatives of Mr Kid; and parties were appointed to give in memorials upon that point; and no great light having been got from these memorials the Lords reasoned the matter among themselves, to the following effect.

That if any action lay, it must either be at common law or upon statute law; but that it could lie upon neither; not at common law, for that before the statutes made in the time of James VI. if the minister had let his manse fall down about his ears, his executors would not have been liable to repair it, more than an heir of entail would be liable to the next heir for letting his house go into disrepair; and indeed if such action could have lain, the statutes concerning