To the 2*d* plea; Payment of the cess does not imply being liable in the parochial burdens. As to the parochial burdens, the practice in Zetland cannot be traced further back than 1631, and is not uniform. No 22.

The Court, before advising the cause, ordained an inquiry to be made by the parties, whether, in the general practice over Scotland, the superior was subjected in payment of any part of parochial burdens.—The Court, upon advising certificates of the practice, with informations, were of opinion, that the expense of building the manse is to be laid on the property, and not on the superiority; and that, by heritors in the statute 1663, proprietors are to be understood; that there has been no usage, either in the general case over Scotland, or in Zetland, sufficient to establish any contrary rule of assessment; and found, 'That Sir Laurence Dundas cannot be assessed in any proportion for building the manse, on account of lands of which he is only superior.'

In a reclaiming petition for the pursuers, it was *urged*, that, although the superior was not liable in parochial burdens, the effect of this exemption must fall on the heritors at large. The vassal is only liable, along with them, in proportion to his interest, that is, his rent, deducting the feu-duty. In that manner, he would have stood valued, and been assessed, for these parochial burdens, in any other county where the superior paid no part of them, and the defender's vassals in Orkney are so valued and assessed for these burdens.

The COURT refused the petition without answers.

Act. *Rae, Crosbie.* Alt. *Lord Advocate, Blair.*

Fol. Dic. v. 3. p. 399. Fac. Col. No 26. p. 42.

1784. *June* 16. ROBERT MUTTER *against* The EARL of SELKIRK.

No 23.
A minister of a parish, partly landward and partly consisting of a royal burgh, is not entitled to demand the building of a manse, but may claim a sum for house rent.
See Heritors of Elgin against Troop, No 21. p. 8508.

THERE being no manse for the ministers of Kirkcudbright, the heritors of that town and parish had been long in the use of allowing to them for house-rent 100 merks yearly; and to Mr Mutter, the present incumbent, they have given L. 15 Sterling on that account. In a late process of augmentation, the Earl of Selkirk, the principal heritor, moved the court of teinds to include in their decreet a special decerniture for the last-mentioned annual sum; but the Lords Commissioners, doubting their jurisdiction in that particular, reserved to him the 100 merks only, so long enjoyed by his predecessors. The payment of the L. 15 having been afterwards with-held, Mr Mutter made application to the presbytery for a decree ordaining a sufficient manse to be built; upon which they decerned the heritors to make payment of L. 355: 2s. for that purpose. The Earl of Selkirk having brought a suspension of the charge that followed against him,

Pleaded; By the statutes which passed in 1563, in 1572, in 1592, and in 1593, provision for manses and glebes was made to the reformed clergy out of those of the ancient parsons and vicars, and the possessions of abbeys and cathe-

No 23. dral churches; and, with respect to glebes in particular, out of any church-lands whatever within each parish. It was not until the usurpation, that by statute 1644 the right to manses and glebes was declared, even where there had been previously no ecclesiastical possessions. That act, however, expressly excepts burgh-town kirks; and though the subsequent statute of 1649 extends the provision to parishes partly consisting of burgh and partly landward, both these last-mentioned enactments have been rescinded; while the statute of 1663, ordaining the building or the reparation of manses, is confined to country parishes, The claim therefore of the charger, who is minister of a royal burgh, is not warranted by law.

Answered; Ministers of parishes that comprehend landward districts, such as Kirkcudbright, are by law entitled to manses; whatever may be the case of those ministers whose parishes consist wholly of royalty. The statute of 1663 is general, and respects landward heritors equally, whether the parish includes a royal burgh or not. Accordingly, it refers to this difference among burghs royal, that of some the ministers have, and of others have not, right to a glebe; thus plainly indicating there being a landward district in the first instance, and none in the second.

Observed on the Bench; It is not to be expected, that ministers should find in the country proper houses, if not built on purpose for them; but in royal burghs they may always obtain fit habitations. Of course it is to landward parishes that in this respect the statute of 1663 relates. Sometimes indeed burghs royal do give manses to their ministers; and if the charger were in possession of one, he ought to be permitted still to retain it. But more frequently, as in the present instance, ministers in towns are allowed a certain annual sum for the renting of a house.

Upon a report of the case by the Lord Ordinary,

The Lords 'suspended the letters; reserving to the minister to insist for a competent house rent.'

Reporter, *Lord Alva.* For the Charger, *G. Wallace.* Alt. *Wight.* Clerk, *Home.*

S. *Fol. Dic. v.* 3. *p.* 398. *Fac. Col. No* 156. *p.* 244.

1786. *February* 21.

The Heritors of the Parish of Cairney *against* The Moderator and other Members of the Presbytery of Strathbogie.

No 24.
A manse may be declared sufficient in terms of the act 1663, though not built at the sight of the presbytery.

The minister's manse in the parish of Cairney having become ruinous and insufficient, a new one was built by the heritors, without any application to the presbytery of Strathbogie, in whose bounds it was situated.

Afterwards the heritors insisted that it should be visited, and declared sufficient by the presbytery, to the effect of obliging the incumbent, in terms of the act 1663, to uphold it during his office.