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provision to parishes partly consisting of burgh and partly landward, both these last-mentioned enactments have been rescinded; while the statute of 1663, ordaining the building or the reparation of manses, is confined to country parishes, The claim therefore of the charger, who is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.

No 24

The presbytery refused a visitation, and

Pleaded; It is only where a manse has been built under the authority of the presbytery, that the heritors are entitled, by the statute 1663, to demand a visitation, and to devolve on the minister the expense of such repairs as may be afterwards needed during his incumbency; and it seems reasonable that this should be the case. If the presbytery have not an opportunity of concerting the plan and situation of the building, they ought not to be made responsible for the suitableness of its accommodation; and without bestowing some attention on the progress of the work, they must be very ill qualified to judge whether it has been properly performed.

Answered; Though, when a minister is not furnished with a proper habitation, presbyteries be authorised to take the necessary measures for supplying that deficiency, it does not follow, that the incumbent is only compellable to fulfil the obligation imposed on him by the statute, where his manse has been erected under their immediate inspection. The reasons too which have been suggested for introducing such a regulation are quite unsatisfactory. If the building, as constructed by the heritors, is in any manner defective, or if its situation has been judiciously chosen, the incumbent may object, and the presbytery may refuse their approbation. But where no exception can be offered, it were surely most unjust, that the heritors who have voluntarily given obedience to the law, should, on that account alone, be forfeited of their right to demand reciprocal performance.

The cause was reported by the Lord Ordinary, when the Court, in pretty strong terms, expressed their disapprobation of the plea here maintained by the presbytery; and it was proposed by one of the Judges, to name persons of skill to inspect the building.

The LORD ORDINARY therefore remitted to the presbytery to proceed in the visitation.

Lord Reporter, *Ankerville.* Act. *Solicitor-General.* Alt. *W. Robertson.*

C. *Fol. Dic. v.* 3. *p.* 399. *Fac. Col. No* 261. *p.* 398.

1788. *July* 28. Mr THOMAS ROBERTSON *against* The EARL of ROSEBERRY.

No 25.
Presbyteries, though they may authorise the repairing or rebuilding of manses, have no power to enlarge them.

AFTER Mr Robertson was settled as minister in the parish of Dalmeny, his manse was built from the foundation; but though this was done with his entire approbation, it was neither completed according to the plan proposed by the presbytery, nor afterwards approved of by them.

At the distance of some years, Mr Robertson, finding, from the increase of his family, that the manse was not sufficiently large, made a new application to the presbytery, who, besides some trifling alterations, directed a kitchen to be built adjoining to the house. Of these proceedings the Earl of Roseberry,