

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 suitability 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.

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,

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

No 25. a considerable heritor in the parish, complained to the Court of Session by a bill of suspension ; when Mr Robertson

*Pleaded* ; It was in the power of the heritors of this parish, effectually to preclude any demand that the minister might be inclined to make for altering or enlarging his manse ; and this either by adopting the plan suggested by the presbytery, and afterwards bringing sufficient evidence of the work being properly executed, or by building a manse, and then requiring a visitation of the presbytery, who, if no objection occurred to them, must have reported the sufficiency of the whole. But as neither of these expedients were fallen upon, it must still be competent for the incumbent to require such alterations as the state of his family, or other circumstances, render necessary ; 21st February 1786, The Heritors of Cairney *contra* the Moderator and other Members of the Presbytery of Strathbogie, No 24. p. 8514.

*Answered* ; For the decent and comfortable accommodation of parochial ministers, the law has authorised presbyteries, in case of any negligence or unwillingness on the part of the heritors, to direct the rebuilding or reparation of manses, as the circumstances of the case may require. But there is not the least room to imagine, that it was intended to empower ministers, from time to time, to demand such alterations as might be thought necessary for their peculiar exigencies. Besides rendering the burden on the landholders infinitely more heavy than is at all requisite, this would open a door for continual disputes between ministers and their parishioners, to the diminution of the respect due to that class of men, and consequently extremely hurtful to their general usefulness. In the case, accordingly, of the Minister of Ceres *contra* the Heritors, where such a demand as the present was made, it was, with great unanimity, disallowed by the Court.

THE LORDS suspended the letters simpliciter.

Reporter, *Lord Dunsinnan.* Act. *Hope.* Alt. *Honyman.* Clerk, *Sinclair.*  
C. *Fol. Dic. v. 3. p. 399.* *Fac. Col. No 39. p. 64.*

If the claim for reparation be good against singular successors. See PERSONAL and REAL.

See GLEBE.

See No 23. p. 3633. *voce* ESCHEAT.

See APPENDIX.