

# APPENDIX

## PART I.

### MANSE

1805. November 19.

MINISTER OF DUNFERMLINE, *against* The HERITORS.

No. 1.

THE minister of Dunfermline, after the Reformation, was possessed of both a manse and glebe. In 1658, an agreement was entered into between the minister on the one part, and the Magistrates of the burgh and the landward heritors, on the other, that £40 Scots should be paid to the minister, instead of house-mail. The manse had by this time probably become ruinous; but that it once existed, is proved by a case reported by Durie; *Lady Dunfermline contra Macgill*, 13th February 1629, No. 14, p. 5137.

The minister of a royal burgh, with a landward parish, having been once in possession of a manse, but having accepted a sum of money for manse-rent, may insist upon a manse being provided for him.

The Reverend James Thomson, minister of Dunfermline, applied to the Presbytery to have a manse designed to him, instead of receiving the £40 Scots as he had hitherto done. The judgment of the Presbytery was brought under review of the Court; when it was "found, that the minister in this case is not entitled to a manse, and that the Presbytery has no power to design him one."

A reclaiming petition being offered, the Court "refuse the desire thereof, and adhere to their former interlocutor, with this explication, that the petitioner is not entitled to have a manse designed to him in terms of the act of Parliament, (30th June 1750) reserving to him to sue for a dwelling-house, as he shall judge competent, as accords."

Matters remained on this footing, till the Reverend Allan Maclean, the present incumbent, presented an application to the Presbytery, to design a manse to him, which they (7th Jan 1808) did accordingly, within the precincts of the abbey.

No. 1. This judgment was brought under review by advocacy, and reported to the Court.

The heritors

Pleaded : That by the previous judgment upon this point, the claim was set at rest for ever : But the majority of the Court did not listen to the plea of *res judicata*.

Upon the merits of the application, the heritors

Pleaded : By the law of Scotland, the minister of a royal burgh is not entitled to have any manse built for him, at the expense of his heritors, although part of the parish consist of a land district. The act 1644, c. 31. which gives power to every presbytery to design manses and glebes to ministers, at any parish kirk within their bounds, specially excepts from this privilee *boroughs-town kirks*, which means those parishes which, besides a burgh, contain also a land district. This interpretation is put beyond doubt by act 1649, C. 45. made to supply the defects of former laws, by which " it is appointed, that burghs, and " the landward parts of the parish, provide all competent dwelling-places and " houses for their ministers." These two acts having been rescinded at the Restoration, the act 1663, C. 21. was made to supply their place ; but carefully omits to re-enact the clause which obliges the burgh and heritors of a landward parish, to provide a manse for the minister. It probably was thought, that it would be easy for a minister, having a royal burgh within his parish, to hire a house, when it might be impossible to find room within its bounds for building one. But this exception against the general rule of providing a manse for the minister of the parish, has been uniformly recognized ; Thomson against Heritors of Dunfermline, 30th June 1750, No. 19. p. 8504 ; Heritors of Elgin against Troop, 28th February 1769, No. 21. p. 8508 ; Nisbet against Magistrates of Montrose, 29th February 1779 (See Note, p. 8511 ; ) Scott against Earl of Moray, (See same note ; ) Mutter against Earl of Selkirk, 16th June 1784, No. 23. p. 8513.

Answered : The parochial clergy, in times of Popery, were all provided with manses ; and it was natural, that (the Legislature should desire that) the reformed clergy should enjoy the same privilege. The easiest way was to give them a right to the manses which had been enjoyed by their predecessors. This is the object of all the early statutes ; and the same benefit is by act 1592, C. 118. extended to abbey and cathedral kirks. These were in many instances situated within royal burghs ; so that under these acts it would seem the parochial clergy of every description were entitled to manses. By 1649, a considerable alteration was made in the law, by which the burden of providing competent manses was laid upon the heritors of the parish ; and the case was expressly provided for, where the parish consisted partly of a burgh and partly of a country district. The clause by which this was provided not having been repealed in 1663, C. 21. gives room for argument that this was done for the express purpose of withdrawing the claim which ministers so situated had upon

their heritors for a manse: but this was not the interpretation at the time; Anderson against his Parishioners, 17th December 1664, No. 10, p. 5121. Williamson against his Parishioners, 25th March 1685, No. 2, p. 5121; nor since; Dobie against Magistrates and Heritors of Linlithgow, 5th March 1802. (See note.)

But it is unnecessary to discuss this abstract point, whether a minister of a royal burgh, who never had a manse, is now entitled to have one designed to him; for his predecessors were at one time actually in possession of a manse, and they have been long in the use of receiving a sum of money in name of a manse-rent, by a special agreement. This agreement may be put an end to whenever either of the parties chooses.

In delivering their opinions upon this case, many of the Judges held, that, by law, every minister of a royal burgh, having also a landward parish, was entitled to claim a manse from the heritors; and that the interpretation given to the act 1663 in so many cases was erroneous. Others of the Judges, however, rested their view of the justice of the minister's claim to a manse in this case, upon the specialty of his having previously enjoyed one; instead of which, by a special agreement, he had accepted a sum of money; so that this case cannot be said to change the interpretation of the act 1663, which has been so repeatedly sanctioned by the Court.

The Lords repel the reasons of advocacy; and remit the cause *simpliciter* (17th January 1805) to the Presbytery.

To which judgment the Court "adhered."

Lord Ordinary, *Woodhouselee*.  
Alt. *W. Erskine*.

Act. *Robertson*.  
Agent, *Tho. Scotland*, W. S.

Agent, *Ad. Rolland*, W. S.  
Clerk, *Pringle*.

F.

*Fac. Coll. No. 222. p. 503.*

\* \* The case of Dobie Minister of Linlithgow against the Heritors was not reported, as it was not understood to decide the general point, that in all cases the minister of a royal burgh, having a landward parish annexed to it, has a legal claim to a manse. The cause came at first before the Court, by means of a bill of suspension, at the instance of the heritors of the country part of the parish, against whom the Presbytery had decerned for building a manse. "The letters were found orderly proceeded," (20th May 1801.) The Magistrates were now called into the field, and the case fully stated on all sides, when the abstract general point was discussed, without any specialty. And the Court found (24th November 1801,) "That the charger is entitled "to no more than 100 merks yearly, in lieu of manse or house, from the "Magistrates of Linlithgow; and therefore suspend the letters *simpliciter*."

A reclaiming petition was presented on the part of the Minister, who, besides arguing the general point, produced evidence from certain proceedings

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of the Magistrates and heritors, that the minister of Linlithgow had formerly had a manse; and it appeared, that instead of following out the plan of providing a new manse, they had paid the minister 100 marks for house-rent; but any incumbent may insist for the rights competent to the benefice, and no private arrangement by one can bind his successor. This specialty weighed with many of the Judges, who had formerly been against the minister's claim, and he was found entitled to a manse; some of the Judges in the majority resting their opinion upon the general right, which they conceived every minister, having a landward parish, has to a manse; while others decided in his favour on the specialty alone.

*F.*