The question was, having been engaged as apprentice to *Macalpine, Fleming and Company*, and that company having been dissolved, Whether the appellant was bound to serve a different company altogether, namely, the respondents *Messrs. Brown and Company?*

The appellant contended, that it was no answer to him to say, that some of the partners of the old concern were partners in the new partnership, because it was manifest that before such new partnership was formed, the old concern had ceased to exist. The new concern, therefore, was a totally different concern altogether, and there being no power to transfer his services, and he having bound himself to Macalpine, Fleming and Company alone, Messrs. Brown and Company had no power to force him to serve them. It was answered for Brown and Company, That the concern of Macalpine, Fleming and Company subsisted in the same way as when the articles with the appellant were entered into, except that the firms had been changed; and, moreover, by express contract the appellant bound himself "to serve the "company, *and the subsisting members thereof carrying on* "*the business.*" Only one member retired from the concern, and his share having been bought up by the remaining partners, the concern continued and subsisted under the remaining partners carrying on the business.

The appellant's bill of suspension was refused by the Lord Ordinary (Hailes); and, on petition to the Court, the Lords adhered. Feb. 24, 1785. Mar. 5, 1785.

Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel, it was

Ordered and adjudged that the appeal be dismissed, and that the interlocutors be affirmed with £100 costs.

For Appellant, *Edward Bearcroft, W. Adam.*

For Respondents, *Ilay Campbell, J. Morthland.*

CHARLES MERCER, Esq., of Letbindy, *Appellant;*
REV. MR. WILLIAMSON, *Respondent.*

House of Lords, 17th March 1786.

MANSE—BUILDING OR REPAIRING.—Held, where the presbytery had ordered an old manse to be pulled down, and a new one built, that

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they were not precluded from doing so, though the old manse might be repaired at a less expense than the cost of a new one; and also held, that they were not limited by the act 1663 to the sum of £1000 Scots, (£83. 6*s.* 8*d.*) but entitled to go beyond it, whatever the expense of building might be.

By law the heritors and land owners of each parish in Scotland are bound to build and repair the churches and manses of the ministers. The manse and offices of the parish of Lethindy having become ruinous, the respondent, the incumbent of the parish church, applied to the presbytery of the bounds, stating the ruinous condition of the offices, and dangerous and insufficient state of the manse, and praying a visitation, in order to have these restored. The presbytery having taken evidence as to the state of the manse and offices, ordered the old manse to be pulled down and a new one to be built, together with suitable offices, and assessed the heritors of the parish in the sum necessary to defray the payment thereof, amounting to £210, and granted decree accordingly.

The appellant, who is the largest heritor in the parish, holding land to the extent of three-fourths of the whole property in it, received notice of these proceedings, but did not do any thing further than intimate his opinion that he deemed a repair of the old manse quite sufficient, in the circumstances. But this course not having been adopted, he brought a suspension of the decree of the presbytery to the Court of Session, setting forth that the manse having been built so recently as 1756, could not be beyond repair from age, and that a repair was the proper step that ought to be taken.

The Lord Ordinary, after a remit made to a builder to examine and report on the condition of the manse, pronounc-
Aug. 10, 1784. ed an interlocutor, finding that it was for the advantage of all parties that a new manse should be built; and to this in-
Jan. 25, 1785. terlocutor, on reclaiming petition, the Court adhered, with
Jan. 27, —— expenses, and decerned.
Feb. 3, ——
Mar. 8, ——

Against these interlocutors the present appeal was brought.

Pleaded for the Appellant.—The act of Parliament passed in 1663 provides that the heritors shall provide and build manses, but it also, at same time, stipulates that the expense thereof shall not exceed the sum of £1000 Scots (£83. 6s. 8d.)—That this was a positive enactment of the statute, which being binding in all cases, the Court of Session had no discretionary power to extend it beyond the maximum men-

tioned. Besides, there was really no necessity in this case for a new manse, as the old might, as is clearly proved by the proof in process, have been repaired at a much less cost to the heritors.

Pleaded by the Respondent.—The plea founded on the act 1663, that the sum is limited to £83. 6s. 8d. is untenable, because that sum had reference to manses immediately then to be built in parishes where there had been none before. Perhaps the sum was reckoned sufficient in those days for building a manse, but now that things and circumstances have changed, the legislature never intended that this sum would be sufficient for such a purpose in all future times. This is evident from the act itself, because in the very next clause, where it comes to speak of the repairs of manses then already built, no limitation in amount is imposed whatever in that department of expense, while, in the present instance, the new manse has been ordered to be built only after the most careful inquiry that such was necessary, and the most advantageous course for the heritors.

After hearing the appellant's counsel,

LORD CHANCELLOR said,

"The respondent's counsel need not answer. The Court of Session had gone according to the spirit of the statute, and according to many former decisions. The appellant was inexcusable for bringing such a matter here; and therefore I move to affirm with £100 costs."

It was ordered and adjudged that the interlocutor complained of be affirmed with costs.

For Appellant, *Ilay Campbell, John Hagart.*

For Respondent, *Alex. Wight, Wm. Adam.*

NOTE.—Not reported in Court of Session.

MESSRS. STURROCK & STEWART, *Appellants;*

WILLIAM PORTER, Merchant St. Petersburgh, and ALEXANDER OGILVIE, Merchant Leith, his Attorney, } *Respondents.*

House of Lords, 27th March 1786.

FACTOR—SALE—NOTICE.—Held, where a foreign merchant was commissioned to purchase flax for a merchant in Dundee, that