

## S E C T. II.

Who are entitled to a manse. Who are liable to build and repair a manse. Minister's claim for house rent.

1663. *January 16.*

RELICT of Mr THOMAS SWINTON, Minister of Ednam *against* Laird of WEDDERBURN.

THE minister of Ednam's Relict insisting for the reparation of the manse, it was *alleged* for the Heritors, That those who have right to the teinds as tacksmen or otherwise, ought to bear a proportion of the reparation.

THE LORDS found, That albeit those who have right to the teinds, were accustomed to repair the of kirks, and the heritors the rest of the kirk; yet there was neither law nor custom alleged, the teinds could be burdened with any part of the reparation.

*Fol. Dic. v. 1. p. 566. Stair, v. 1. p. 159.*

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Reparation of a manse found in no part to affect the titular of the teinds, but the heritors of the lands only.

1666. *December 4.*

The PARISHIONERS of Port, Supplicants.

THE Parishioners of Port having built a manse upon the glebe to their minister where there was no manse before, and having valued the same according to the late act of Parliament, and stented the same upon the Parishioners and others; they did supplicate the Lords for letters of horning conform to the stent-roll, in respect that the said late act of Parliament, being the 21st act of the third session of the last Parliament (1663) bears no warrant for horning.

THE LORDS ordained letters of horning to be passed.

*Stair, v. 1. p. 407.*

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1679. *November 14.*

The MINISTER of Morham *against* The Laird and Lady BINSTON.

THE Minister of Morham finding the manse of his parish insufficient, did cause visit the same, and found that it required about L. 1000 to re-build it; whereupon the Laird and Lady Binston being charged as having all or most of the parish, they give in a bill of suspension, and being heard thereupon, the

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Heritors are bound to build the manse, and liferenters are free of any burden on that account.

No 10.

question arose, whether the Lady as liferenter was liable for any part of the expenses, or if the heritor was liable for the whole; for whom it was *alleged*, That the charge being upon the act 21st, Parliament 1663, anent manses and glebes, it bears expressly, 'Where there are no sufficient manses, the heritors of the parish shall build sufficient manses;' and this act being a statute *stricti juris*, cannot be extended to liferenters, unless it were expressed. It was *answered*, That the benefit of the ministry redounding to liferenters during their life, justice requires that they should bear a part of the burden; for, if the land were to be adjudged in consideration of the value, the liferent would be stated according to the worth and age of the liferenter, to a third, fourth, or some other proportion; and therefore, according to that proportion, she should be liable in this burden as well as in other burdens; likeas, by the 199th act, Parliament 14th, King James VI, where manses are designed, relief is ordained against the feuars, tacksmen, and possessors of the parish, and therefore, though by the last act, heritors be ordained to build, yet they may crave relief against liferenters as possessors. It was *replied*, That the former order of manses is wholly changed, for the building is laid only upon the heritors, and the upholding, and consequently the reparation, upon the incumbent, and in the vacancy out of the vacant stipends; but, whatever might be pretended in equity for making a statute to burden liferenters for some share for building manses, yet where the matter is fixed by a statute, the Lords ought to acquiesce therein, and cannot extend it *de casu in casum*.

THE LORDS found the liferenter free of any burden of the building of the manse.

*Fol. Dic. v. 1. p. 566. Stair, v. 2. p. 706.*

\* \* \* Fountainhall reports this case :

THE LORDS found the 21st act of Parliament in 1663, anent manses, did not make Lady liferenters liable to contribute to the building of manses; and they would not extend the act of Parliament, though it relate to act 199th, Parliament 14th, James VI. which is fuller; *statuta* being *stricti juris*, and *incommodum non solvit argumentum*.

*Fountainhall, MS.*

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No 11. 1685. March 25. MINISTER of Kirkaldy *against* His PARISHIONERS.

THE LORDS found a burgh liable for reparation of the Minister's manse, although it was a burgh royal, because it had a manse and glebe and landward parish, and so fell not under the act 21st, Parliament 1663.