

PRESIDENT. I have some doubt as to *solatium*. Would inquire whether the boy's friends knew that he was to be sent to Havannah instead of Hamburg; for, if so, there was a fraud and a wrong, and the *solatium* given would be too small.

On the 15th February 1769, "The Lords found Loch liable in £40 sterling, and in expenses;" adhering to Lord Gardenston's interlocutor.

Act. R. Sinclair. *Alt.* R. Blair.

1768. *January 8th*; and 1769, *June 13*. LADY LEITH, and her CHILDREN, *against* EARL of FIFE.

REPARATION.

Amount of Assythment.

THIS case is reported by Lord Kaimes, (Mor. p. 13,904,) who has stated the circumstances, and the argument maintained on the question, whether an assythment was due? That question having been determined in favour of the pursuer, it next came to be considered, What sum should be granted in name of assythment?

The following is Lord Hailes's report of the opinions delivered by the Judges on that point:—

HAILES. We have no *data* by which to determine the extent of the assythment. After the Rebellion in 1715, it was proposed to take five years' rent of the estates of those concerned in the rebellion, and to grant an amnesty. May not something of the same kind be done here?

PITFOUR. That proposal came from a friend of Lord Hailes, who did not like forfeitures. It was three, not five years' rent; but I think that five, or even three years' rent, is by far too much. In punishments, both *consilium et eventus* are to be considered. Here there was no premeditated intention of murder; but still there was a man killed, and consequently an assythment is due. The patrimonial loss of Leithhall's family does not affect me, for that loss is not proved.

AUCHINLECK. Anciently, there were regulations or rates for the price of blood, estimated according to the circumstances of the person slain: there was the *kelcher*, (head money,) "*domini regis, comitis, thani, vel rustici.*" In later practice, assythment has been regulated by other principles: the circumstances of the slayer are attended to as well as the rank of the slain. The assythment, here, ought to be moderate, for the slayer has a wife and nine children, and a small fortune.

KAIMES. I must suppose that there was a voluntary killing. The wife and

nine children move me. At the same time, what is due is rather a *solatium* than damages.

PRESIDENT. The situation of the persons claiming an assythment is to be considered; but when those persons are well provided, and in easy circumstances, I would give assythment rather as a sort of revenge than as damages. It is the decree of this Court, rather than the money, which ought to gratify the pursuer.

BARJARG. If the person slain had a liferent office, the assythment would be greater, because the patrimonial loss to his relations is greater. The only evidence of the murder is from the acknowledgment of the defender. The fugitation and escheat are only for contempt of the Court, not any proof of the murder. This circumstance ought to go into the scale in voting the assythment.

On the 16th February 1769, "The Lords modified the assythment and damages to L.150 in whole."

On the 13th June, 1769, altered and modified L. 300 in whole.

Act. Cosmo Gordon. *Alt.* A. Lockhart. *Reporter*, Barjarg.

1769. February 20. WILLIAM TROOP *against* EARL of FIFE and OTHERS.

MANSE.

Minister of a Royal Burgh, with a Landward Parish, not entitled to designation of a Manse, upon the Statute 1663.

[*Faculty Collection*, IV. p. 136; *Dictionary*, 8508.]

HAILES. The pursuer has founded much of his argument upon this, That, before the Reformation, manses were, by the law, to be built by the parishioners. This is a fundamental error, as appears from the 13th Canon of a Provincial Council held in Scotland, 1249, during the reign of Alexander II. It runs thus:—" *Statumus etiam quod quælibet ecclesia mansionem aliquam prope ecclesiam habeat, in quam Episcopus sive Archidiaconus honeste recipi valeant, quam decernimus infra annum debere fieri tam expensis personarum quam vicariorum pro rata suarum portionum. Sustentatio autem domorum spectat ad vicarium cum habeat usum earum et commodum; et ad hoc per sequestrationem fructuum ecclesiarum compellantur.*" My only difficulty here is, that there appears to have been a manse in this burgh. There was a manse in 1649; and, in possession of the eldest minister, there was a manse in 1682;—and, that the manse was repaired after the Revolution, appears from the writings in process. If, then, there did actually exist a manse in this royal burgh, I doubt how far that circumstance does not take the case out of the general rule.

AUCHINLECK. It is a general regulation that ministers are to have manses; but it does not follow, that, if there are many ministers in a parish, each minister is to have a manse. I consider a second or third minister as no more than