1779. *December* 17. WILLIAM FULLERTON *against* JAMES RICHMOND.

No 3.
A minister in a royal burgh, having a landward territory annexed to it, has right to a glebe, there being church-lands within the parish.

THE parish of Irvine is composed of the royal burgh of that name and a landward district. Its ministers had never been possessed of a manse; and their glebe amounted to little more than an acre.

In 1775, the presbytery of Irvine, intending to enlarge the glebe of this parish to the legal extent, it was *contended* for Mr Fullerton, the proprietor of the church-lands nearest the church, that the ministers of royal burghs were not by law entitled to glebes, although some from private gift possessed lands distinguished by that appellation. From this he inferred, that Mr Richmond, the minister of this parish, was not entitled to the proposed enlargement. In support of the general proposition above mentioned, Mr Fullerton

*Pleaded;* The right of ministers in Scotland to a manse and glebe, which is derived from special enactments, 1563, c. 72.; 1572, c. 48.; 1592, c. 118.; extends not to those in royal burghs, who are understood to have advantages of other kinds more than sufficient to compensate that want. Hence, by act 1644, authorising the designation of manses and glebes out of temporal lands, it is expressly declared, 'that borrowstown-kirks are always excepted.' And when it was judged proper to accommodate all ministers with manses, a particular statute was necessary in favour of ministers in royal burghs; 1649, c. 45.

The two last acts being rescinded in 1661, and rights of ministers thereby restricted to their former extent, it is taken for granted by act 1663, c. 21. that ministers in royal burghs, unless from private endowments, have no right to glebes, it being there ordained, 'That all ministers should have a certain 'proportion of ground allotted to them for grass, 'except such in royal burghs "as have not right to glebes."

This argument is farther supported by the interpretation given to other parts of the act 1663. By one of the rescinded acts it has been seen, that ministers in royal burghs were to be provided with manses; and by this act, competent manses are directed to be built in every parish. But as no express provision occurs in the last statute in favour of ministers in royal burghs, it has been found, that these, even where part of the parish was landward, could not demand a manse; 30th June 1750, Thomson *contra* the Heritors of Dunfermline, *voce* MANSE; Duff against Chalmers, No 29. p. 5147. It may therefore be reasonably concluded, that their right to glebes is in the same situation.

*Answered;* By the statutes passed after the Reformation, authorising the designation of glebes out of church-lands, the legislature did not create a new right in favour of ministers, but only preserved, or revoked so much of the ancient patrimony of the church, as was necessary for accommodating those serving the cure with ground sufficient for maintaining their families in a comfortable manner. Hence, by the three first statutes, all ministers, without distinction, may insist for glebes, where there are church-lands within the parish;

No 3.

nor is it obvious why ministers in royal burghs, whose charges are generally most laborious and expensive, should in this matter be put in a worse situation than those in parishes entirely landward. When indeed, by statute 1644, lands which had never belonged to the church were, contrary to the general idea of the legislature, made subject to this burden, the inhabitants of royal burghs were exempted from an allotment which the value of property so situated would have rendered exceedingly grievous. But this distinction, originating from that statute, is now completely done away by its repeal.

The exception in the statute 1663 clearly shews, that ministers in royal burghs are not in general excluded from this advantage. For if, by 'ministers 'having right to glebes,' had been meant those who had obtained them by private endowments, no reason can be assigned for giving to such, an additional preference over their brethren; and agreeably to this the Court decided, Minister of Dysart *contra* the Heritors, No 1. p. 5121.; Minister of Kirkaldy *contra* the Heritors, No 2. p. 5121. The point, Whether a minister of a royal burgh is entitled to a manse, has never yet received a determination on general principles, the decisions quoted having been founded on specialties. There is however an obvious distinction between manses and glebes in this respect; the former, by the acts before the Usurpation, being only due to ministers where there was a parson's or vicar's manse within the parish; whereas the latter could be demanded out of any church-lands so situated.

"THE LORDS repelled the defence."

*Nota.* It was *observed* on the Bench, That the report, February 28. 1769, was erroneous, the decision there having proceeded on the particular circumstances of the case.

Lord Ordinary, *Gardenston.* For Mr Fullerton, *Ilay Campbell.* For Mr Richmond, *Hay.*
Clerk, *Tait.*

*Fol. Dic. v.* 3. *p.* 251. *Fac. Col. No* 95. *p.* 183.

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## SECT. II.

### Consequences of uniting Parishes.

No 4.
If the parishes are united, the minister has right to both glebes.

1631. *January* 22. ROUGH, Minister of Inverkeithing, *against* KER.

MR ROBERT ROUGH, minister at Inverkeithing, whereto the kirk of Rosyth was annexed by act of Parliament 1618, having charged John Ker to remove