

M A N S E.

S E C T. I.

Designation of the Manse.—Form of designing Manses.

1605. *June 20.* BALFOUR *against* BISHOP OF ST ANDREWS.

IN an action of suspension pursued by William Balfour in St Andrews against the Bishop thereof, upon the designation of the said William's house, as manse to the Bishop, being minister there, the LORDS found the reasons of suspension relevant, in respect of the act of Parliament against designation of manses to ministers, within the precinct of monasteries, or Bishop's palaces, if there were any other parson's manse or vicar's manse within the parochin; as William Balfour *alleged*, That Allan Watson's house was the vicar's manse, mair ewest to the parish kirk than the said William's house; which the LORDS found relevant.

Fol. Dic. v. i. p. 565. Haddington, MS. No 831.

No 1.

Found that a minister cannot have a manse designed to him within the precincts of a monastery or bishop's palace, if there be another parson's or vicar's manse within the parish.

1605. *June 20.* MARSHALL *against* CARNEGIE.

MR JOHN MARSHALL, minister at Brechin, having obtained a designation of a manse and glebe, and charged for the same, his charge was suspended, upon allegiance that there were vicar lands within the parochin; and so the defender's lands, being bishop's lands, could not be designed. Thereafter *replied*, That the lands contained in the suspension were parts and pertinents of the barony of Dun, lying within the same, set by the Lairds of Dun, past memory

No 2.

Lands inclosed and planted about with trees adjacent to a feuer's house, may not be designed for a manse.

No 2.

of man, was found more relevant than the reason founded upon an old possession of the vicar's, and a tack set by this present vicar, within these 22 years, in the Laird of Dun's minority. Thereafter it was *alleged*, That the designation and charges should be suspended for an acre of land, because it was adjacent to the feuer's dwelling-house, environed with high dykes on all sides, and planted with trees round about, so could not be designed as arable land. Which reason was found relevant, and admitted to probation, because the Lords thought they would not allow designations of a man's orchard, or planted and dyked inclosure, to be arable land to the minister. Thereafter the reason of suspension being, that the land designed was mortified of old to an alterage, and the hail alterage and tenements and lands pertaining thereto were given to the Town of Brechin, and confirmed in Parliament, and so pertained to the Town, and could not be designed as vicar's land or bishop's land; and the Town of Brechin, admitted for their interest, adhered to the reason; it was *answered*, That the reason was not relevant for the suspender, because the minister offered him to prove, that the suspender had taken infeftment of the said land from the Bishop, and had paid him mail and duty, and so could never allege to any modification or right competent to any other party; and the Town of Brechin, being admitted for their interest, in a suspension, behoved either to assist the pursuer or the defender, and so alleging the mortification, which was destructive of the minister's designation and charge, and of the suspender's infeftment, their allegiance could not be respected; in respect whereof, the Lords found the minister's answer, of the suspender's accepting of an infeftment from the Bishop, relevant. *Lastly*, The suspension bore, that the suspender offered him to prove, that such particular land being vicar's land, was more ewest to the manse, and so should be designed before his land. It was *answered* by the minister, That he, in fortification of his designation, offered him to prove, that the land designed was more ewest to the manse than the land contained in the suspension, wherein he should be preferred in probation. I reasoned for the minister, That, for two causes, the minister should be preferred; *1st*, Because he had a designation standing, affirming the land designed to be the most ewest kirk-land; which testification was given by them who were appointed and authorised to that effect by the act of Parliament; and therefore it was more agreeable to reason to admit his allegiance to his probation, in fortification of that which was already tried by the ministers and the most honest men of the parochin, and testified by writ, than to admit the suspender to prove by witnesses the direct contrary of their testification; *2dly*, If this should be found relevant to the suspender, and he should prove by witnesses, that there were other kirk-lands more ewest, and, in respect thereof, the designation should be suspended *simpliciter*, thereafter the minister designing the land which is in this judgment proved most ewest, the feuer thereof not being now called when he shall be charged upon a new designation, will suspend, alleging that the land first designed is more ewest than his land, and his allegiance being admitted to his

probation against my designation, and he proving the same by witnesses, the minister's letters shall be suspended *simpliciter*, and so he shall never get an effectual designation. The Collector *answered*, That the Lords were always in use to admit the feuer's reason, that there were kirk-lands more ewest than the lands designed to probation, in respect whereof, without any answer either to the reason or the inconveniencies aforesaid, the LORDS found the suspender's reason, that there were other kirk-lands mair ewest, relevant, and admitted the same to probation.

No 2.

Fol. Dic. v. 1. p. 565. Haddington, MS. No 833.

1612. *January 22.*PITTENWEEM *against* DURIE.

A MINISTER seeking a manse to be designed to him within the precincts of an abbay, the Prelate or Lord of Erection has liberty, by act of Parliament, to refuse to give him his manse within the precinct, if they really offer to give him a manse as useful and commodious outwith the precinct.

No 3.
Found in conformity with Balfour against Arch-bishop of St Andrew's, No 1. p. 8495.

Fol. Dic. v. 1. p. 565. Haddington, MS. No 2361.

1631. *February 11.*MINISTER of INVERKEITHING *against* KER.

No 4.

FOUND, That although the most ewest kirk-lands, where there was no glebe before, might be designed; yet that the houses upon that kirk-land could not be claimed by the minister, if these houses never belonged to any incumbent before, because there was no foundation in any statute for such a demand; and therefore that the minister had nothing left but either to deal with the parish to build him a manse, or pursue them for the same, or build it himself, the expenses whereof would be refunded to his executors by the next intrant, conform to the act of Parliament.

Fol. Dic. v. 1. p. 565. Durie.

* * * This case is No 4. p. 5124, *voce* GLEBE.

1632. *January 20.*MONTEITH *against* KER.

No 5.

THE whole vicar's manse should pertain and be designed to the minister, Ja. VI. Parl. 3, cap. 48. whether the same be set in feu or not, and was so decided betwixt Mr Robert Monteith of Duddingston and John Ker, pretending a feu of the vicar's manse.

Auchinleck, MS. p. 124.