

Arguments taken from borrowstoun kirks, or parishes within burghs, will not apply to the present case, where the parish is not confined to a burgh, but consists of a large district to landward, which happens to comprehend a burgh within it. It would sound strangely to say, that by the erection of a burgh in an extensive parish, the minister, at the same time that he had his labour increased, should forfeit one of his most valuable rights; and, in more cases than one, ministers of royal burghs have been found entitled to manses upon this very footing, that there was a landward parish annexed.

*Replied* for the Heritors, The charger's whole argument proceeds upon the supposition, that, prior to the Usurpation, heritors were subjected, at common law, to the burden of building or repairing manses. But this is a mistake. It is true indeed, that the ministers of certain burghs have got right to manses, by coming in place of the popish clergy. These may derive assistance from inveterate use, and to them the decisions quoted must be referred. In the same manner might perhaps be explained the words of the statute 1663, referred to by the charger, though, by the expression of villages and towns, burghs of regality or barony ought properly to be understood.

THE LORDS determined the question upon the point of law, and found, That the minister of Elgin was not entitled to insist for the designation of a manse, upon the statute 1663.

Reporter, *Barjarg.*

For the Heritors, *Lockhart, W. Mackenzie.*

For the Charger, *David Dalrymple, Geo. Wallace.*

G. F.

*Fol. Dic. v. 3. p. 398. Fac. Col. No 90. p. 163.*

Similar decisions were pronounced in the case of the Minister of Montrose, 29th January 1779, Nisbet against Magistrates of Montrose, and in the case of South Leith, Scot against Earl of Moray; see APPENDIX. See also N 23. p. 8513.

But it may be doubted, whether the decisions in all these cases did not rest upon special circumstances; and perhaps the general point may be considered as not yet settled.

*Fol. Dic.*

1778. July 2.

SIR LAURENCE DUNDAS *against* ARTHUR NICOLSON, and Others.

THE presbytery of Lerwick in Zetland assessed the parish of Nesting for rebuilding the manse, and proportioned the assessment among the heritors according to their number of merk lands.

Messrs Nicolson and Hunter, who held their lands in the parish, feu of Sir Laurence Dundas, for payment of a considerable feu-duty, having objected to

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The superior not liable to be assessed for the expense of building the manse.

No 22. this assessment, by which no part of the expense was laid on the superior, brought a suspension of the presbytery's judgment, and called Sir Laurence in an action of declarator.

*Pleaded* for the pursuers; *imo*, In the general case, the superior is bound to contribute to the expense of supporting the manse. By the stat. 1663, c. 21. renewing an act in 1649, the heritors of the parish are subjected to this burden. The term heritor applies to every person who has a feudal right in lands, superior as well as vassal. By heritor is understood superior in the acts 1661, c. 35. and 1681, c. 21.

This interpretation is agreeable to justice. The expense of kirks and manses is a public tax on the landed property, for the necessary purpose of supporting a religious establishment. It is equitable that both superior and vassal should contribute to this purpose, in proportion to their respective interests in the lands; the superior for his feu-duties, and the vassal for his rent, deducting the feu-duties, unless it is otherwise stipulated betwixt them.

The general practice of assessing for parochial burdens by the valuation-book, interprets the statute in this manner. Though in Zetland there is no valuation of the lands, the same principle must regulate the assessment.

*2do*, The feu-duties stipulated in the feu-rights of the pursuers, are very nearly equal to every thing the tenants paid for them at the time. The superior having thus the substantial benefit from the lands, has continued ever since to pay the whole cess. If there had been a valuation in Zetland, the superior, as he paid the cess for the lands, would have at least stood valued for these feu-duties, and would have been assessed for parochial burdens, according to his valuation. But further, the whole of these parochial burdens have likewise been paid by the superior. This implies that it had been understood betwixt the parties, when these feus were constituted, that the superior should remain liable for the whole of these burdens.

*Answered* for the defender, to the 1st plea; By heritors in the act 1663, must be understood holders of land in property. So the word is explained by Sir George Mackenzie, in *Observ. on act 1662, c. 6.* And there was no reason that the expense of these parochial burdens should by the act have been made to reach the superior, who has no interest in the purposes for which they are imposed. He is not entitled as superior to a residence in the lands, nor even to a seat in the church. The heritor has the whole benefit of the parish-church; and therefore ought to be subjected to the whole expense of upholding church and manse.

It is not required by the statute 1663, that the cess-roll should be the rule of assessment for these parochial burdens.—As it will answer, in most cases, to point out who are liable, it may, in general, be safely followed. But if, in any case, it should not correspond with the intendment of the statute, a different rule must take place.

To the 2d plea; Payment of the cess does not imply being liable in the parochial burdens. As to the parochial burdens, the practice in Zetland cannot be traced further back than 1631, and is not uniform.

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The Court, before advising the cause, ordained an inquiry to be made by the parties, whether, in the general practice over Scotland, the superior was subjected in payment of any part of parochial burdens.—The Court, upon advising certificates of the practice, with informations, were of opinion, that the expense of building the manse is to be laid on the property, and not on the superiority; and that, by heritors in the statute 1663, proprietors are to be understood; that there has been no usage, either in the general case over Scotland, or in Zetland, sufficient to establish any contrary rule of assessment; and found, 'That Sir Laurence Dundas cannot be assessed in any proportion for building the manse, on account of lands of which he is only superior.'

In a reclaiming petition for the pursuers, it was *urged*, that, although the superior was not liable in parochial burdens, the effect of this exemption must fall on the heritors at large. The vassal is only liable, along with them, in proportion to his interest, that is, his rent, deducting the feu-duty. In that manner, he would have stood valued, and been assessed, for these parochial burdens, in any other county where the superior paid no part of them, and the defender's vassals in Orkney are so valued and assessed for these burdens.

The COURT refused the petition without answers.

Act. *Rae, Crosbie.*

Alt. *Lord Advocate, Blair.*

*Fol. Dic. v. 3. p. 399. Fac. Col. No 26. p. 42.*

1784. June 16. ROBERT MUTTER *against* The EARL of SELKIRK.

THERE being no manse for the ministers of Kirkcudbright, the heritors of that town and parish had been long in the use of allowing to them for house-rent 100 merks yearly; and to Mr Mutter, the present incumbent, they have given L. 15 Sterling on that account. In a late process of augmentation, the Earl of Selkirk, the principal heritor, moved the court of teinds to include in their decret a special decerniture for the last-mentioned annual sum; but the Lords Commissioners, doubting their jurisdiction in that particular, reserved to him the 100 merks only, so long enjoyed by his predecessors. The payment of the L. 15 having been afterwards with-held, Mr Mutter made application to the presbytery for a decree ordaining a sufficient manse to be built; upon which they decerned the heritors to make payment of L. 355:2s. for that purpose. The Earl of Selkirk having brought a suspension of the charge that followed against him,

*Pleaded;* By the statutes which passed in 1563, in 1572, in 1592, and in 1593, provision for manses and glebes was made to the reformed clergy out of those of the ancient parsons and vicars, and the possessions of abbeys and cathe-

No 23.

A minister of a parish, partly landward and partly consisting of a royal burgh, is not entitled to demand the building of a manse, but may claim a sum for house rent.  
See Heritors of Elgin against Troop, No 21. p. 8508.