

1712. January 31. STEEL against HIS PARISHIONERS.

MR WILLIAM STEEL, minister at Lochmaben, wanting a manse, he applied to the presbytery, in terms of the acts of Parliament, to make a visitation, in order to provide him ; and the same being edictally intimated from the pulpit, a committee of the ministers of that presbytery met at the church, but the heritors did not compare ; however, they proceeded, and examined tradesmen what the building a manse in that part of the country might cost ; and on their report gave forth their decret ; which being suspended, these points came to be determined. *1^{to}*, That by the 21st act 1663, ~~asent~~ building manses, the ministers and tradesmen may proceed, though the heritors be absent or withdraw, being cited, the ministers having no other form or compulsitor to bring them, but an intimation from the pulpit on the Lord's day preceding ; but the tradesmen being parishioners will not supply that clause of the act, requiring two or three of the most discreet men of the parish to be present also, to assist and judge on the tradesmen's opinion ; who must be over and above the workmen, who would be very unfit to restrict or limit their own work, *2^{do}*, THE LORDS found the ministers were by our law empowered to proceed to liquidate the value and price of the manse, not exceeding L. 1000 Scots, and likewise to chuse the most convenient place for its situation near the church, with a suitable glebe, and grass or forage for his horse and cows ; and also to cast and proportion the sum liquidated upon the heritors, and to name a factor and collector for uplifting and depursing it. *3^{to}*, Found the rule of the cast must be, not the real rent, (which would put ministers to a long probation, and occasion many great debates) but the valued rent extracted out of the cess-books. *4^{to}*, Found, though some of the heritors were dead, as the Duke of Queensberry, &c. others had the privilege as members of Parliament, yet this would not sist process as to others. *5^{to}*, As to bygones since his admission, and till his manse be built, he has a good claim for as much as he has paid of house-rent ; yet it cannot come in here in this designation, but he must raise a process against his heritors for the same. *6^{to}*, It is in the minister's option, either to take L. 20 for his grass, or to seek land to be allocated to him for that use. But the presbytery must not pitch upon arable land that has been in use to be tilled, see 7th act 1606 ; but so that heritors must not *in emulationem* till up what was in use to be lee ; else they might leave nothing to be designed for the ministers but moss, muir, hills, or rocky ground, to the minister's prejudice, and defrauding the good design of the law ; for such an interpretation were to lie at the catch *et verba legum captare*.

No 7.

Found that it is in the minister's option, either to take L. 20 for his grass, or require land to be allocated to him for that use ; but the presbytery must not pitch on land which was in use to be tilled ; and the heritors on the other hand must not *in emulationem* till that which was in use to be lee.

Fol. Dic. v. 1. p. 350. Fountainhall, v. 2. p. 713.

No 7.

. Forbes reports the same case :

MR WILLIAM STEEL pursued the heritors of his parish of Lochmaben to make payment to him of L. 999 : 14s. as the expense of building a manse for the pursuer, estimated in the terms of the act 21st, Ses. 3. Parl. 1. Cha. II. by order of, and approved by the presbytery ; and for 16 years annualrent thereof that he had served the cure there wanting a manse, according to their respective proportions.

THE LORDS found, that the words of the 21st act of Parliament 1663, viz. that the heritors build manses at the sight of the ministers therein appointed, and two or three of the most knowing or discreet men of the parish, do empower such ministers and two or three of the said most knowing and discreet men over and above the tradesmen named by them, to proceed in absence of the heritors called by an edict. And found, that the said ministers and knowing and discreet men may proceed not only to liquidating of the value of the manse ; but also may appoint a place for its situation, and proportion the value thereof upon the heritors conform to their valued rent, and name a factor for uplifting thereof. And found, that after such an establishment, any of the heritors may be proceeded against for their proportions, notwithstanding that the process must sist as to others, in respect of their privilege of Parliament. But found that the pursuer cannot claim any thing for bygones since his entry, or by the act of the presbytery, in respect it was not decerned by the presbytery. See MANSE.

Forbes, p. 582.

SECT. IV.

Form of Designation.

No 8.

1626. July 5.

L. KERSE *against* REID, Minister.

The Lords sustained the designation of a glebe, altho' it was not measured, because the designation bore that the mea-

IN a suspension raised by the L. of Kerse, against Mr Andrew Reid, minister at Alva, for his manse and glebe, the LORDS sustained a designation of the glebe, albeit the same was not mett nor measured, to be four acres of land ; because the designation bore, ' That the metting was hindered by the servants ' of the L. Kerse, who boasted the metster, and would not suffer the commis- ' sioner appointed to design, to use the order of metting, required by the act