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

an assistant, and not entitled to any manse. As to a manse for the first minister, if the parish consisted altogether of a burgh, he would have no title: but it is a strange doctrine that a minister should have no manse, because a royal burgh happens to be within the parish. In such a burgh, for instance, as New Galloway, where all the houses belong to the family of Kenmure, there must be only one manse, and the ministers must adjust between themselves who is to have it. My only doubt is as to the decreet of modification and locality, where it was urged, that the minister had no manse, and where it is to be supposed that that argument was one cause of granting a very large stipend, little less than L.100 *per annum.*

PITFOUR. The series of the Acts of Parliament, and the judgment of the Court in the case of *Dunfermline*, satisfy me that the ministers of royal burghs are not entitled to manses. There was a specialty in that case, arising from the use of paying house-maill; but still the general point was determined. Before 1649, heritors had no concern in manses: while the church was opulent, the clergy had no occasion for the aid of the heritors; but, when the clergy became stipendiaries, they had. The Act 1649 was, with many others, abolished by the Act Rescissory; but many of those rescinded Acts were, by degrees, restored. The Act 1649 was in part restored by the Act 1663, which has a retrospect to the very day on which the Act 1649 was made; but this Act, 1663, omits the clause as to royal burghs,—it must have been *consulto* omitted. If there had been any view of a parish, whereof great part was within royal burgh, why did the Act neglect to lay part of the burden on the royal burghs? When burghs comprehend a very small part of the parish, there may be a difference; but that is not the case here.

PRESIDENT. The first question is as to the title of the pursuer. I do not think, that, where there are two ministers, there must be two manses. The eldest minister only can be entitled to a manse: the decreet of modification and locality proves this much, that, at that time, 1714, the minister was not understood, in law, to be entitled to a manse.

JUSTICE-CLERK. The statute, 1649, did introduce something into the law which was not law before. The statute 1663, omitting a proviso of that statute 1649, shows that there is a distinction between burghs and landward parishes. The case of *Dunfermline* is in point. If the minister was entitled to a manse, in law, his accepting L.40 Scots of house-rent, would not have hurt his benefice. This decision can have no very general consequences; it is fixed one way or other in almost every burgh, whether a minister should have a manse or not. There has been no manse at Elgin since the Revolution. In the decreet of modification and locality, the want of a manse was considered, and stipend provided accordingly. The acquiescence of the minister ever since, is a strong circumstance.

BARJARG. Where a charge is a burgh charge, no manse is due; but not so where a burgh is in a large parish. Were the minister actually in possession of a manse, that might afford an exception from the general rule. The decreet of modification and locality was not sufficient to debar the minister, because that was upon the motion of the minister, not of the presbytery.

KAIMES. The Acts of Parliament, the decision 1750, and the modification

and locality, concur in showing, that here the minister is not entitled to a manse.

On the 28th February 1768, "The Lords found, that neither of the ministers was entitled to a manse."

Act. G. Wallace, D. Dalrymple. *Alt.* A. Lockhart.

Reporter, Barjarg.

On the June 1769, the Lords adhered.

1769. *February* 28. MR ALEXANDER CHALMERS *against* ARCHIBALD DUFF of Drummuir.

GLEBE.

Presbyteries cannot design Moss for the use of a Minister.

[*Faculty Collection, IV.* p. 162; *Dictionary*, 5147.]

AUCHINLECK. If there is plenty of peats in the Duke of Gordon's moss, this is a good defence. Upon the general point, there can be no universal rule, for in many parishes there are no peats. When a minister is once in possession of moss, and the moss is exhausted, it would be hard to prevent him from the use of other mosses. Heritors might thereby drive ministers out of the parish; for, in many parishes, the expense of leading peats from a distance would exhaust the stipend.

PRESIDENT. There is nothing in this cause that can induce me to extend the jurisdiction of the Presbytery; for the Presbytery has acted with the most glaring partiality.

On the 28th February 1769, "The Lords found the Presbytery were incompetent judges, and that their decreet was, *funditus*, null and void;" adhering to Lord Kaimes's interlocutor.

For Mr Chalmers, R. M'Queen. *Alt.* A. Lockhart.

Diss. Auchinleck, Barjarg, Hailes.
