BARBARA LYON *against* FERGUS GRANT.

BARBARA Lyon being in a shealing in the same bed with her brother, Fergus Grant came also into the same bed; and the brother, being examined, deponed that he was wakened in the night by his sister and Grant struggling together. Barbara insisted that she was that night got with child by Grant: she brought forth a child accordingly, and pursued Grant for aliment: Grant acknowledged being in bed with her, but denied carnal knowledge. The Sheriff of Perth allowed her to depone in supplement: a bill of advocation was presented upon this, and refused; she deponed, and decreet was pronounced in her favour. This decreet was afterwards suspended; but the letters were found orderly proceeded.

In this case, the presumption was strong: Grant owned being in bed with the girl: and her brother, in the same bed, deponed as to their struggling. The birth of the child and the time of it concurred. The Sheriff therefore allowed the oath in supplement; but had the circumstances been less strong, or had the affair rested merely on the assertion of the woman, or simply upon the man's being in bed with her, probably an oath in supplement would not have been allowed; because, in such a case, it resolves into a woman's proving her own cause.

PROPERTY.

ALTHOUGH a proprietor, whose lands front the sea, should maintain that he has property, from highest flood-mark to the lowest ebb, of all minerals, both above and below ground; also of the sea-weed growing on the rocks, or thrown in upon the shore, yet so unlimited and free is the right of sea-fishing, that, within this property, it is lawful for any of the lieges to gather wilks, cockles, limpets, muscles, and other small fish, or bait for taking fish, (see FISHINGS.) See, in confirmation of this, *24th May* 1549, *Town of Crail* against *Grizel Meldrum*, observed by Balfour, p. 626. As to lug, or other bait, it is particularly to be observed, that if fishing in the sea be *juris publici*, taking bait proper for the fishing must be so also, for this is essential to the fishing itself, and is therefore equally the property of all who have occasion to use it. See Arg. *Mowat of Garth* against *Bruce Stewart of Symbister*, decided *3d December* 1776; see *26th January* 1762, *Earl of Errol* against *Sidney*.

ALVEUS MARIS.

IN determining a cause concerning an oyster-fishing, between Ramsay of Preston and the York Building Company, Lord President gave it as his opinion, That the *alveus maris*, properly so called, and which is constantly covered with water, belongs to the Crown, for behoof of the public, 30th November 1763.

But as to the shore, within flood-mark, covered at flood, and bare at ebb, it would appear that it remains the property of the contiguous heritor, subject to the common uses of navigation. So argued as to lime rocks; summer 1772, *Sir John Hall* against *Dirleton.*

See Stair, *B.* 2, *tit.* 1, § 5.

SEAT IN A CHURCH.

1776. *November* 21. SAINT CLAIR of SAINT CLAIR *against* MISS ALEXANDER.

IN deciding a cause between Colonel Saint Clair of Saint Clair and Miss Alexander, concerning a seat in the church of Laswade, the Lords agreed, *Primo*, That a seat in a church, a parochial church, was not to be considered as private property, in the proper sense of that word: the church was the place appointed for the heritors and inhabitants of the parish to meet for public worship; and no heritor could be excluded from a seat in it. The heritors had right to seats in it, by way of real servitude; and no person, except an heritor, and the inhabitants under him, had right to a seat there. A person, therefore, who was not an heritor, could have no proper right to a seat there, either by a voluntary or prescriptive title: it was a subject which could not prescribe. *Secundo*, They thought, in consequence of this, that no heritor could have an exclusive property to more of the area of a church for a seat, than effeired to his property in the parish; and that this property was to be estimated by the valued rent. And therefore, *Tertio*, That when a church was sought to be divided legally, the rule was, the valued rent; and, this division once made, behoved to continue, notwithstanding of the accidental increase of inhabitants, in one corner more than another; because, otherways, processes of division would be repeated daily, and be endless.

In this case between Colonel Saint Clair and Miss Alexander, the fact was, that the church of Laswade had never been divided legally.

The shape of the process was a declarator at Colonel Saint Clair's instance, against Miss Alexander, that he had the only good right to the whole of that area of the church of Laswade, fitted up as seats for the feuars, tenants, &c. of the barony of Roslin. In the proceedings in this process, both parties referred to a proof of the possession taken in another process.

It was not disputed that the barony of Roslin had its proper share of the area; but then Colonel Saint Clair contended, that Miss Alexander had more than her proper share of this share, to which she pretended an exclusive right.