

1769. June 29.

DUFF *against* BRODIE.

## No 22.

Seat in a church carried by a disposition of lands.

THE question was, Whether a seat in a church was understood to be carried by a disposition of lands, without being expressed in the disposition.

Brodie of Windyhills had disposed to Earl Fife, the lands of Muirtown, in the parish of Elgin, but without any mention of a seat in the church, which had been immemorially possessed by the proprietors of that estate. It appeared that the church had been rebuilt in 1683, at the joint expense of the burgh and of the heritors, who were assessed in proportion to their valued rent. So that the question came to be much the same as if it had occurred in the case of a country parish, though the defender endeavoured to distinguish it, by observing, that, in burghs, it was common for persons to acquire right to seats, without any relation to particular lands. But it did not appear that Mr Brodie's seat was in that situation.

THE LORDS found the pursuer entitled to the seat, as part and pertinent of his lands.

Reporter, *Barjarg.*Act. *Arthur Duff.*Adv. *John Douglas.*

G. F.

*Eol. Dic. v. 4. p. 40. Fac. Col. No 98. p. 353.*

1770. November 21.

GRIZEL PEDEN *against* The MAGISTRATES and TOWN COUNCIL of PAISLEY.

## No 23.

Seat in the church, not expressly conveyed, goes as part and pertinent of the landed estate.

THE estate of Cochrane of Fergusshie being brought to a judicial sale, the country estate, lying within the barony parish of Paisley, was purchased by the Magistrates, and a tenement and garden in the town by Bethia Cochrane. There was also a seat in the church which belonged to Fergusshie, but of which no mention was made in the decret of sale, or in any of the rights granted to either of the purchasers. Mrs Cochrane, the purchaser of the house and tenement, had made use of the seat for several years; and having, in 1765, conveyed these subjects to Grizel Peden, she claimed the seat in the church as part and pertinent of her property. She was opposed by the Magistrates of Paisley; and the Sheriff found, that the pursuer, as disponee of Mrs Bethia Cochrane to a house in the town of Paisley, has no right to the seat in the church libelled.

Mrs Peden advocated the cause; but the Lord Ordinary remitted the same to the Sheriff *simpliciter*.

In a reclaiming petition, she *maintained*, That as the rights of neither party expressly conveyed this subject, it would pass as part and pertinent of her property; that it was such, was ascertained and explained by the possession. And