

annexed, and in no other parochial burdens: Find, that they are not liable to contribute for upholding the fabric of the parish-kirks from which they are disjoined; but that they remain liable in all other parochial burdens in these parishes; and remit to the Ordinary to proceed accordingly."

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A. D. Grant, W. McKenzie.

Alt. Hay Campbell.

Clerk, Gibion.

Fel. Dic. v. 3. p. 369. Fac. Col. No 54. p. 138.

1775. February 1.

JOHN DUKE of ARGYLE, and other Heritors of the Parish of Campbletown,
against CHARLES ROWAT, and other Inhabitants of that Borough.

THE town of Campbletown, and some part of the country about it, originally consisted of four parishes, which were afterwards united into one, now called the parish of Campbletown; and the place of worship came to be fixed within the town, where a church was built, in which the Gaelic language, as being the only one then understood in the parish, was used. It soon, however, appeared, that this church was not sufficient for containing all the parishioners; and the English language having come in use, it became necessary to have another place of worship, and a minister who could preach in the English language. This accordingly took place; and it was afterwards found expedient to make the Highland and Lowland congregation a collegiate church; and both the ministers serving the cure within the parish are presented by the Duke of Argyle, as patron.

Some time ago, the New or Lowland church becoming ruinous, a visitation was appointed by the Presbytery, in common form, who were proceeding to oblige the heritors of the parish to repair or rebuild it, in the same way as they had decerned against them a few years ago to build a manse for the accommodation of this same minister of the Lowland congregation. The heritors, however, thought it necessary to have the matter explained, whether they were to have the whole of this burden laid upon them, and at the same time, not to have the benefit of the area of the church, more than two thirds of which is at present possessed by certain seat-holders, who claim the same as their property.

Accordingly, the Heritors presented a petition to the Sheriff, setting forth, That, though the two kirks of Campbletown had been built for a considerable time past, yet that they were promiscuously occupied by the heritors and tenants within the parish, and the inhabitants within the borough; and, therefore, praying the Sheriff to grant warrant to such persons as he should think proper, to measure the area of the church, and afterwards divide the same. And this petition having been intimated at the market-cross of Campbletown and

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A parochial church, partly landward and partly burgage, must be repaired and rebuilt at the expense of the heritors and burgh.

No 13. church doors, to all concerned, answers were put in to it, in name of Charles Rowat, surgeon in Campbletown, and some others of the inhabitants, for themselves, and in behalf of all the alleged proprietors of seats in the Lowland church; and in these answers it was *contended*, That, as this Lowland church was allenarily built and proportioned among such of the inhabitants of the town and country as did not understand the Gaelic language, and never was meant as a parish church, the pursuers had no right to demand a division of the area, since they had neither built the kirk, nor contributed for that purpose. And the Sheriff-substitute having pronounced an interlocutor, finding, ‘ That the said church ‘ was built by the voluntary contribution of well disposed people, with the ap- ‘ probation of the Dutchess of Argyle, who was manager for the then Duke, ‘ her son; and that the seats in the said church were enjoyed by the present ‘ possessors without interruption, their predecessors or authors, beyond the years ‘ of prescription; in respect whereof, refused the desire of the petition, with ‘ regard to the Lowland church.’ The Heritors brought a suspension of this judgment, and, at the same time, a process of declarator before this Court, concluding, *1mo*, That it should be found and declared, that the pursuers are entitled to have the area of the Lowland church divided, and shares thereof allotted them respectively, in proportion to their valued rents in the parish, or according to such other rule as the Court should think just and reasonable; or otherwise; *2do*, That they, their heirs and successors, should be free in all time coming, of the burden of repairing the church, &c. and that the defenders should be bound to uphold the said church, and also the manse for the Lowland minister, and kirk-yard dykes, and perform all other burdens whatsoever respecting the said church; and that, in the event of its being so found, the defenders should be liable in repetition to the pursuers of the expenses of building a manse for the minister of said Lowland church, amounting to the sum of L.300 Sterling.

THE LORD ORDINARY having found that the seats belonged to the occupiers and assoilzied from the declarator, upon the idea that this was no parish church, the matter was laid before the Court in a reclaiming petition; on advising which, with answers, upon the 18th January 1774, the LORDS pronounced the following interlocutor:

“ Find that the Lowland church of Campbletown, is a parochial church, and is subject to division, conform to the rules of law, and remit to the Lord Ordinary to proceed accordingly, and specially to hear parties on their alleged rights of property to the seats within mentioned.”

The cause having returned to the Lord Ordinary, who, after hearing parties, pronounced an interlocutor unfavourable for the defenders, they reclaimed to the Court, and insisted, That both in virtue of their right of property, and as parishioners, they are entitled to a share of the area of the Lowland church of Campbletown.

Answered; It is a fact no less remarkable than true, that almost the whole of these defenders have long ago deserted the established church, and built a kirk of relief for themselves, in the heart of the borough, Mr Rowat being at their head; so that a more emulous and captious plea cannot well be figured than what they are here maintaining against the magistrates and community of the borough, and against the whole heritors who adhere to the legal form of worship.

That the heritors have no view to exclude any one inhabitant of the parish from having his due proportion of one or other of the two parochial churches; on the contrary, what they contend for is, that both the one and the other of these churches shall be considered as parochial churches, and shall be rebuilt as such, and divided according to the known rule established by law, and practised in all other parishes, which rules are formed upon the very plan of giving access to all the parishioners to attend divine worship in the church; whereas, on the other hand, the plan of the defenders is to appropriate this Lowland church to themselves as private property, or at least the greatest part of it, so as to exclude the bulk of the parish; when, at the same time, they will not rebuild it upon that plan, but insist that the heritors should be at the whole of the expense, whereby they would lay the burden on the heritors, and take all the benefit to themselves. This circumstance of the fabric being ruinous, and that a new one must be built, they have chose to keep altogether out of view. They have again and again been called on to say, whether, in case the area was adjudged to be their private property, they would be at the expense of rebuilding and maintaining this private property of theirs, and relieve the heritors thereof now and in all time coming, and what security they would find that this would be the case. To this civil question they have all along declined giving any answer. If they meant nothing more than to have the seats which they pretend a right to in the present church set apart to them as their private property, and if they were not to claim the same interest in the new church which is to be built, it would be scarce worth while to dispute the matter with them, because it is doubted if the present church will last out the process; and, therefore, it is immaterial who possesses the area of the present church, which is now shut up, and stands condemned as totally ruinous; unless in the view that, by adjudging it to the defenders, this would give them a handle to say, that they must also have the area of the new church. For this reason, and as the judgment of the Court has now finally ascertained the church in question to be a parochial church, it is thought to be a necessary consequence that the division must be made according to the rules used in parochial churches.

In the present case, there is both a borough and landward parish; but the respondents, the heritors of the landward part, have no dispute with the borough. They are willing that the borough should have their share of the area of the church in a just proportion with the landward part of the parish; and a proportion of the expense of rebuilding the church will in like manner be laid

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upon the borough. And so the Lord Ordinary's last interlocutor imports, agreeably to the decision in the case of Kinghorn, and to the known rule in such cases.

“ THE LORDS find, That the Lowland church of Campbletown, being a parochial church, ought to be repaired and rebuilt at the expense of the heritors and borough; and, as the defenders are not heritors, find they are not entitled to any part of the area, except such share of that part falling to the borough as may effeer to them, in proportion with the other inhabitants.

Act. *Ilay Campbell.*Alt. *Cha. Hay.*Clerk, *Tait.**Fac. Col. No 154. p. 19.*1776. *December 17.*EARL of MARCHMONT and Others *against* EARL of HOME and Others.

No 14.

THE church of Eccles being rebuilt, the Sheriff, in a process of division of the area, found that a former division was an improper one, being against the consent of some of the principal heritors, and that the same was not binding; and found that each heritor's share must be set apart by itself, and that the heritors have choice of place, according to the valuation of their several estates, and appointed a sworn surveyor and measurer to proportion the said area accordingly. THE LORDS, in an advocation, sustained that judgment, with this variation, That each heritor, in proportion to his valued rent, must have a seat in the church for himself and family, distinct from the share of the area, to be allotted to his tenants; but that, in dividing the whole area of the church, the area of each heritor's seat must be taken *in computo* in making up his share corresponding to his valued rent.—See APPENDIX.

*Fol. Dic. v. 3. p. 370.*1781. *November 20.*The FEUERS and HEADS of FAMILIES in the TOWN of CRIEFF, *against* The HERITORS of the PARISH of CRIEFF.

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A church having become ruinous, the question occurred, at whose expense must it be rebuilt. Two thirds of the parishioners resided in a burgh, the remainder in

THE parish church of Crieff being insufficient for accommodating the whole parish, and having likewise become ruinous, the question occurred, by whom, and in what proportions, the expense of building a new one was to be defrayed.

The old church was capable of containing 500 persons; and no discovery could be made, by whom it had been either originally erected, or afterwards repaired. The Presbytery of Auchterarder, within whose bounds it is situated, reported, that the new church ought to be sufficient to contain 1200 hearers, and that the examinable persons in the parish amounted to 1980. Of these,