

to the pursuer; repel the objection made to the pursuer's title, and remit to the Lord Ordinary to proceed accordingly."

No. 26.

Lord Ordinary, *Monboddo.* For Grant, *Macqueen.* For Chalmers, *Rolland.* Clerk, *Pringle.*
R. H. *Fac. Coll. No. 105. p. 318.*

1791. *May 25.* DAVID ALLAN and Others, *against* JAMES MACRAE.

A NUMBER of people in the parish of Fettercairn, in Kincardineshire, who formed themselves into a religious society, under the denomination of Bereans, and chose Mr. Macrae for their pastor, purchased a piece of ground, on which they erected a place of worship, the whole expense being defrayed by the voluntary contributions of the members. The property having been acquired in the name of a committee of their number, as trustees for the congregation, the feudal right was vested in these trustees by infestment.

Afterwards, however, a schism happened in this congregation, a part of them adhering to Mr. Macrae, and another part renouncing all connection with him; in consequence of which, the question came to be agitated in a process of declarator, at whose disposal the property of the society should be.

The Lord Ordinary reported the cause; when

The Court, contrary to the decision in the case of Gibb's meeting-house in 1752, and agreeably to those of Jobson in 1771, No. 5. p. 14555. which related to a seceding meeting-house at Dundee, and of Smith in 1779, respecting a meeting-house at Falkirk,

"Found, That the feu-right obtained by David Allan and others, as managers for building a meeting-house for divine-worship, was a trust in their persons, for behoof of the contributors for purchasing the area, and building the meeting-house in question; and that the said trustees are bound to denude themselves of said trust, in favour of the said contributors, or the majority of them, or managers named by the majority."

Reporter, *Lord Dreghorn.* Act. *Solicitor General Stewart.* Alt. *Dean of Faculty Gillies.*
Clerk, *Sinclair.*

S.

Fol. Dic. v. 4. p. 287. Fac. Coll. No. 181. p. 367.

1791. *June 17.* MONTGOMERY *against* FORRESTERS and COMPANY.

FORRESTERS and Company fitted out a ship for the Greenland whale-fishery, and advertised a division of the property in her into thirty-two shares, of £.150 each; and it was stipulated that the majority of the adventurers should direct the employ and disposal of the ship, and that the contract should subsist for three years. Forresters and Company subscribed themselves for ten shares, Montgomery

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No. 28. for two, and Watson for one; other nine shares were likewise taken; and the remaining thirteen were never filled up. The ship made two unsuccessful voyages, and the concern appearing unprofitable, the majority of the subscribers resolved to sell the ship by public auction. Against this measure Watson and Montgomery entered a formal dissent by protest. The ship was not sold, whereupon the majority resolved to fit her out as a merchant vessel, which was accordingly done. Watson and Montgomery, who had again entered their protest against this last measure, now brought action against Forresters and Company, and the other partners, for a breach of contract; and urged, That the society being entered into for the whale-fishery, and to continue three years, that agreement could not be departed from without the express concurrence of the whole partners; and that the clause in the contract stipulating that a majority of the partners should direct the employ of the vessel, applied only to the detail of operations in the course of the agreed trade, and gave no power to this majority to alter the trade itself, or to put an end to it altogether. The Lords were of opinion, That independently of the clause in the contract, it was essential to the nature of a society of this kind, that the majority of the partners should have a power to put an end to it. It was like a lottery, or an adventure to purchase stock upon time, and which, if unfortunate, no law could bind the majority to continue, to the hazard of their ruin; they therefore assolizied from the action. See APPENDIX.

Fol. Dic. v. 4. p. 287.

1805. June 27. DAVIDSON and Others, *against* AIKMAN and Others.

No. 29.

Property being held in trust for a seceding congregation, how is it to be managed or disposed of when the society becomes disunited?

Is it lawful to bestow property on a seceding congregation, subject to the discipline of a self-constituted, but tolerated, ecclesiastical body?

May such a condition be

THIS was a dispute concerning the property of a chapel at Perth, which had been for many years a place of worship for the sect of Protestant Dissenters known by the name of Burgher Seceders.

In the year 1733, several clergymen of the Church of Scotland having disapproved of an act of the General Assembly, with respect to the mode of collating to vacant churches by the heritors and elders of each parish, as inconsistent with the principles of Presbytery, protested against the determination of the General Assembly, and declared, that they should nevertheless be at liberty, upon all occasions, to hold their own doctrines regarding the right of congregations to choose their ministers. Having persisted in this opinion, notwithstanding the censures of their superior church judicatories, they were declared no longer ministers of the Church, and prohibited from the exercise of their ministerial functions. They immediately formed themselves into a Presbytery, after the model of the Church Establishment.

Mr. William Wilson, minister of Perth, was one of those clergymen who, upon this occasion, seceded from the established Church; and, being followed by a considerable number of his congregation, it was agreed, that a "convenient spot of ground should be purchased, and a house built thereon for public worship, that