

dimensions sufficient to accommodate 585 persons: Finds, That a church of the former dimensions would be too small, and that the latter would not be too large, for the decent and convenient attending on divine worship in the parish of Tingwall."

No 17.

Against this judgment, the heritors preferred a reclaiming petition, in which they also insisted, that the form of the church proposed by the Presbytery was liable to considerable objections. After advising this petition, with answers given in, in behalf of the minister,

THE COURT were in general of opinion, That the plan of the building might be concerted among the heritors themselves, without the intervention of the Presbytery, whose only province it was, to see that the church was of a proper size for accommodating those who attended public worship.

The extent of the accommodation requisite for the number of parishioners was fixed in this manner; those were deemed examinable persons who were twelve years old, and the church was to be built in such a way as to be capable of containing two-thirds of the parishioners falling under this description. This was laid down as a general rule to be observed in all time coming.

THE LORDS found, " That the heritors of the parish of Tingwall are obliged to build a church capable of containing two-thirds of the examinable persons in the parish, not under twelve years of age, and remitted to the Lord Ordinary to proceed accordingly."

Lord Ordinary, *Henderland.* Act. *W. Robertson.* Alt. *Cha. Hay.*
Clerk, *Hume.*

G. Fol. Dic. v. 3. p. 369. Fac. Col. No 335. p. 515.

1793. May 16.

JOHN URE, and other Heritors within the Royalty of the Burgh of Forfar, against PATRICK CARNEGIE, and Others, Heritors of the Landward District of the Parish of Forfar.

THE parish of Forfar is composed partly of the royal burgh of that name, and partly of a landward district. The number of examinable persons within the burgh, and lands holding of it, amounts to 2965; the country district contains 765.

The old parish church having become ruinous, a new one was built, and an action was brought by some of the burgh heritors, in order to ascertain the manner in which its area should be divided.

The pursuers contended, that the church should be divided between the burgh and the landward district, in proportion to their respective population. The country heritors, on the other hand, insisted, that the area should be divided

No 18.

The area of a new church in a parish where there is both a royal burgh and a landward district, falls to be divided between them in proportion to their population.

No 18. equally between the burgh and themselves, and that their half should be subdivided in proportion to their valuation.

It was understood, that the expense of building the church was to be defrayed according to the extent of area which each party should ultimately obtain.

The leading arguments on both sides were the same in substance with those stated in the report of the case of Crieff, 20th November 1781, No 15. p. 7924. and need not be here repeated.

The defenders likewise founded on a decree-arbitral in 1759, relative to the building a schoolmaster's house, and repairing the church, whereby it was declared, that in future the expense necessary for these purposes should be equally defrayed by the burgh and landward district; and it was contended, that this afforded evidence of the practice in bearing public burdens, and that therefore the benefit arising from them should be divided in the same proportions.

THE LORD ORDINARY reported the cause on informations.

One of the Judges, influenced by the practice of the parish, in paying parochial assessments in other cases, thought the area should be divided equally. The rest of the Court, however, were clear, that where a considerable town makes part of a parish, from the very nature of the thing, the division must proceed on the *ratio* of population. They considered this point as fixed by the decision in the case of Crieff above-mentioned, and in those of Campbletown, No 13. p. 7921, and St Andrew's, 25th May 1791. See APPENDIX.

It was accordingly found, "That the area of the church in question must be divided betwixt the heritors in the landward part of the parish and the burgh of Forfar, in a proportion effecting to the number of the parishioners in each, and that the expense of the building must be defrayed by the burgh of Forfar, and the landward part of the parish, in proportion to their respective shares of the area."

Lord Ordinary, *Henderland*. Act. *M. Ross, Jo. Millar, jun.* Alt. *Craigie*.
R. D. *Fol. Dic. v. 3. p. 371. Fac. Col No 52. p. 107.*

1796. June 21.

ROBERT SKIRVING and GEORGE YOUNG against ROBERT VERNOR.

No 19.
Suitable accommodation in that part of the area of the parish-church which belongs to

ROBERT VERNOR, in 1763, obtained a lease of a farm belonging to the Earl of Wemyss, in the parish of Inveresk. His Lordship's factor, at the same time, wrote a letter to him, mentioning, that as he had agreed to repair and keep in good order his Lordship's property in the church during the lease, he was in return to be allowed to possess or subset the whole of it.