

1730. July 2.

MINISTERS and KIRK SESSION of MONTROSE *against* the MAGISTRATES of the TOWN, and HERITORS of the Parish.

No 6.

THE money arising from the ringing of the bells, and burying within the church does not properly belong to the poor, and therefore is to be burdened with the reparation of the church. See APPENDIX.

*Fol. Dic. v. 1. p. 527.*

1738. February 9.

HERITORS of the Parish of Selkirk *against* the DUKE of Roxburgh.

No 7.

THESE heritors raised a process against the Duke, in order to have it found, that he, as titular of the teinds of that parish, was bound to repair the third part of the kirk.

*Pleaded* in defence; There was no law which made the titular liable for the reparations of any part of the kirk, that being no burden on the teinds, but on the heritors, conform to their valuations. Indeed, where there is a quire, it hath been found the parson is bound to repair it; and, perhaps on the same foundation, where there is another titular of the teinds than the parson, he hath been found liable; but, where there is no quire, as is the case here, there is no instance known of either the one or the other's being obliged to repair the kirk.

*Answered*; That the provision, by our statutes, for burdening the heritors with reparation of churches, particularly by the 54th act, 3d Parl. James VI. is only a subsidiary or additional provision, but does by no means liberate those who were formerly subject by law before the Reformation; such as the parsons who received the rents and revenues of the church, or the profits and emoluments which arose therefrom by bells, burials, masses, &c. it having been always justly held, that the advantages arising from the benefit, or church itself, should contribute at least to the upholding of the fabric; conform to which, it was determined in the cases, Kirk Sessions of Montrose and Canongate against their respective heritors, (see *supra*). Besides, the last clause of the above act, touching the furnishing of communion elements, (which is generally understood to be in like manner imposed upon the heritors,) is a further evidence of this doctrine, since, notwithstanding thereof, by uniform practice, that burden is also laid upon the titulars of the teinds; though, no doubt, if these were exhausted, the heritors would be liable by the statute; which, though it introduces a new remedy, does not abolish the old one established by many authorities in the canon law; as appears from the title of the decretals, *De ecclesiis aedificandis vel reparandis*, chap. 1 & 4.

Reparation of the kirk is no burden on the titular of the teinds, further than his valuation.