

No 11. manse; the one as well as the other must be repaired and upheld by the heritors, and the method of levying the repairs has at all times been the same with regard to both.

In the *next* place, whatever rule shall be adopted with regard to proportioning the repairs between the town and country parish, the division of the area must necessarily correspond to the same rule; for it is an essential principle which no law can dispense with, that the burden must be allocated among the several parties in the same proportion that the property of the subject thereby affected is to be divided among them: 'Quem sequitur commodum, eum debet sequi et incommodum.' No possession for any length of time can entitle a party to a share in the area of a church who has no property in the parish; and as little can any possession entitle an heritor to a greater share of the church than corresponds to the lands he has in the parish. This would be to establish a prescriptive right without a title, nay, even contrary to the title of the party, which must, from the nature of the thing, be bounded by the property he has in the parish.

N. B. What the Lords chiefly regarded in the question about dividing the area, was the immemorial possession. And with respect to the other point of the repairs, it was at last agreed on by both parties, that the burgh should continue to pay the one half and the heritors the other.

"THE LORDS found, that the community of the burgh were entitled to retain possession of that proportion of the area of the kirk of Kinghorn presently possessed by them; and that the heritors of the landward parish were also entitled to retain possession of that proportion of the area of said kirk presently possessed by them, without prejudice to the heritors of the landward parish dividing the said proportion of the kirk ascertained to belong to them in common, and to the community of the burgh, dividing the proportion of said area ascertained to continue with the community. And of consent found, that as the community of the burgh of Kinghorn had been in use to pay one half of the repairs of the kirk, manse, and office houses; therefore that they were liable in the one half of the present repairs, and also in the half of all repairs on said kirk, manse, and office-houses, in time coming.'

Act. Ferguson.

Alt. Garden.

Clerk, Gibson.

J. C.

Fol. Dic. v. 3, p. 370. Fac. Col. No 17. p. 29.

1773. February 2.

JOHN DRUMMOND of Logiealmond, against The HERITORS of the Parishes of Monzie, Monedie, Crieff, and Others.

No 12.

"THE LORDS find, that the heritors of the lands annexed *quoad sacra* are liable in their proportion of upholding the fabric of the kirks to which they are

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."

No 12.

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

No 13.

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