

in support of her argument, she referred to Fountainhall, 15th January 1697, 18th November 1698, Lithgow *contra* Wilkieson, No 16. p. 9637. No 23.

The Magistrates *answered*; That the seat in the church, like the burial-place or other appendages, fell naturally to be considered as a part and pertinent of the landed estate lying within the parish, and not of a town house in the burgh of Paisley, which was not said to be the mansion house, or to have any connection whatever with the landed property. The case mentioned from Fountainhall was adverse to the pursuer's plea; as the lands and mansion house had been separated, and the seat in the church conveyed with the house *per expressum*.

THE LORDS unanimously adhered.

Lord Ordinary, *Kennet*.

For the Magistrates of Paisley, *Ilay Campbell*.

For Peden, *B. Hepburn*.

Clerk, *Campbell*.

R. H.

*Fac. Col. No 49. p. 139.*

1777. June 17.

ROSE *against* RAMSAY.

THE LORDS found, that mills were carried by a disposition of the lands with parts and pertinents. See APPENDIX.

No 24.

*Eol. Dic. v. 4. p. 40.*

1787. November 20.

ROBERT CARMICHAEL, and Others, *against* SIR JAMES COLQUHOUN.

THE title-deeds of Sir James Colquhoun's estate bear his right 'to the fishing of salmon, and other fishings, in the water of Leven.'

Mr Carmichael, and other proprietors of the grounds lying along the banks of the river, and who are all infeft in their lands, either '*cum piscationibus*,' or with 'parts and pertinents,' instituted an action of declarator against Sir James; in which they set forth, 'That they and their authors had, by virtue of their titles to the lands, been in the immemorial practice of catching trouts with nets and rods in the river *ex adverso* of their respective properties; and concluded, that they had a right so to fish, or 'in such other manner as to them might seem proper; and that he ought to be prohibited from the exercise of trout-fishings *ex adverso* of their lands.'

*Pleaded* for the defender; Trout fishings are not more *res nullius*, or less capable of appropriation, than salmon-fishings, which, from their superior value, have been ranked *inter regalia*; Craig, lib. 1. dieg. 16. § 11.; Stair, b. 2. tit. 3. § 69. The defender's title-deeds shew, that he is vested with the property of those in question.

No 25.

The right of trout-fishing understood to be conveyed under the description of part and pertinent, but may be expressly reserved from the grant; or transferred to a third party.