

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

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.

No 25.

Answered; The defender's exclusive right to salmon-fishing is admitted. But, long before the Crown conferred that right, the pursuers authors had acquired their lands, and the trout-fishing as pertinent of these; for in no instance was the fishing of trout ever reserved by the Crown. It could not, then, bestow that right on the defender. Nor is the vague expression of 'other fishings,' sufficient to indicate such an intention.

The Court seemed unanimous in the opinion, that the right of trout-fishing in a river, though naturally inherent in the property of the adjacent banks, so as to accompany lands as part and pertinent, might yet be reserved from the grant, or transferred to a third party, either expressly or by prescription; and that trouts were *res nullius* in this sense only, that any person standing on a high road or any public ground contiguous to the stream, might lawfully catch them.

Some of the Judges thought the clause 'other fishings' in the defender's charters sufficiently expressive of the exclusive right of fishing trout on the banks in question; which others did not admit; but all seemed agreed, that if he or his authors had that exclusive right, it had been lost by disuse.

The cause was reported upon informations; when the Lords pronounced this interlocutor:

'In respect that Sir James Colquhoun's right to the salmon-fishing is not disputed in this cause, find he has right to the salmon fishing in the river Leven, where it runs through the property of the pursuers; find the pursuers have a right to fish trouts opposite to their respective properties, with trout-rods or hand-nets, but not with net and coble, or in any other way that may be prejudicial to the salmon-fishing belonging to Sir James Colquhoun, the defender.'

Reporter, *Lord Braxfield*.
Alt. *Solicitor-General et Baillie*.

Act. *Dean of Faculty et Moribland*.
Clerk, *Home*.

S.

Fol. Dic. v. 4. p. 40. Fac. Col. No 5. p. 10.

1795. June 2. ARCHIBALD CAMPBELL *against* COLIN CAMPBELL.

No 26.

A tenant found not entitled to cut sea-ware for the manufacture of kelp, although the lease gave him the lands, with 'parts, pendicles, and universal per-

COLIN CAMPBELL possessed on a lease, which commenced in 1759, one half of the farm of Nether Kames, on the coast of Argyleshire, with the 'houses, 'biggings, yards, orchards, mosses, muirs, meadows, grassings, sheelings, parts, 'pendicles, and universal pertinents thereof, used and wont.'

Archibald Campbell purchased this farm in 1786. He soon after complained to the Sheriff, that his tenant pretended to a right to cut sea-ware for the manufacture of kelp, and therefore he craved an interdict against his doing so in future.