

1769. June 29.

DUFF *against* BRODIE.

No 22.

Seat in a church carried by a disposition of lands.

THE question was, Whether a seat in a church was understood to be carried by a disposition of lands, without being expressed in the disposition.

Brodie of Windyhills had disposed to Earl Fife, the lands of Muirtown, in the parish of Elgin, but without any mention of a seat in the church, which had been immemorially possessed by the proprietors of that estate. It appeared that the church had been rebuilt in 1683, at the joint expense of the burgh and of the heritors, who were assessed in proportion to their valued rent. So that the question came to be much the same as if it had occurred in the case of a country parish, though the defender endeavoured to distinguish it, by observing, that, in burghs, it was common for persons to acquire right to seats, without any relation to particular lands. But it did not appear that Mr Brodie's seat was in that situation.

THE LORDS found the pursuer entitled to the seat, as part and pertinent of his lands.

Reporter, *Barjarg.*Act. *Arthur Duff.*Adv. *John Douglas.*

G. F.

Eol. Dic. v. 4. p. 40. Fac. Col. No 98. p. 353.

1770. November 21.

GRIZEL PEDEN *against* The MAGISTRATES and TOWN COUNCIL of PAISLEY.

No 23.

Seat in the church, not expressly conveyed, goes as part and pertinent of the landed estate.

THE estate of Cochrane of Fergusshie being brought to a judicial sale, the country estate, lying within the barony parish of Paisley, was purchased by the Magistrates, and a tenement and garden in the town by Bethia Cochrane. There was also a seat in the church which belonged to Fergusshie, but of which no mention was made in the decret of sale, or in any of the rights granted to either of the purchasers. Mrs Cochrane, the purchaser of the house and tenement, had made use of the seat for several years; and having, in 1765, conveyed these subjects to Grizel Peden, she claimed the seat in the church as part and pertinent of her property. She was opposed by the Magistrates of Paisley; and the Sheriff found, that the pursuer, as disponee of Mrs Bethia Cochrane to a house in the town of Paisley, has no right to the seat in the church libelled.

Mrs Peden advocated the cause; but the Lord Ordinary remitted the same to the Sheriff *simpliciter*.

In a reclaiming petition, she *maintained*, That as the rights of neither party expressly conveyed this subject, it would pass as part and pertinent of her property; that it was such, was ascertained and explained by the possession. And

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.