

*ALVEUS MARIS.*

IN determining a cause concerning an oyster-fishing, between Ramsay of Preston and the York Building Company, Lord President gave it as his opinion, That the *alveus maris*, properly so called, and which is constantly covered with water, belongs to the Crown, for behoof of the public, 30th November 1763.

But as to the shore, within flood-mark, covered at flood, and bare at ebb, it would appear that it remains the property of the contiguous heritor, subject to the common uses of navigation. So argued as to lime rocks; summer 1772, *Sir John Hall against Dirleton.*

See Stair, *B. 2, tit. 1, § 5.*

*SEAT IN A CHURCH.*

1776. November 21. SAINT CLAIR of SAINT CLAIR *against* MISS ALEXANDER.

IN deciding a cause between Colonel Saint Clair of Saint Clair and Miss Alexander, concerning a seat in the church of Laswade, the Lords agreed, *Primo*, That a seat in a church, a parochial church, was not to be considered as private property, in the proper sense of that word: the church was the place appointed for the heritors and inhabitants of the parish to meet for public worship; and no heritor could be excluded from a seat in it. The heritors had right to seats in it, by way of real servitude; and no person, except an heritor, and the inhabitants under him, had right to a seat there. A person, therefore, who was not an heritor, could have no proper right to a seat there, either by a voluntary or prescriptive title: it was a subject which could not prescribe. *Secundo*, They thought, in consequence of this, that no heritor could have an exclusive property to more of the area of a church for a seat, than effeired to his property in the parish; and that this property was to be estimated by the valued rent. And therefore, *Tertio*, That when a church was sought to be divided legally, the rule was, the valued rent; and, this division once made, behooved to continue, notwithstanding of the accidental increase of inhabitants, in one corner more than another; because, otherways, processes of division would be repeated daily, and be endless.

In this case between Colonel Saint Clair and Miss Alexander, the fact was, that the church of Laswade had never been divided legally.

The shape of the process was a declarator at Colonel Saint Clair's instance, against Miss Alexander, that he had the only good right to the whole of that area of the church of Laswade, fitted up as seats for the feuars, tenants, &c. of the barony of Roslin. In the proceedings in this process, both parties referred to a proof of the possession taken in another process.

It was not disputed that the barony of Roslin had its proper share of the area; but then Colonel Saint Clair contended, that Miss Alexander had more than her proper share of this share, to which she pretended an exclusive right.

She again alleged a verbal grant of that share from Colonel Saint Clair's author, and exclusive possession for more than 40 years. The Lords seemed generally of opinion, That, where a church was not divided legally, possession was the rule, until a legal division should be made; but, in this case, they thought the possession rather promiscuous, and therefore they pronounced this interlocutor, 22d November 1776:—"Find that the defender, Miss Alexander, *qua* proprietrix by progress, of those parts of the lands of Roslin, granted in feu by William Sinclair of Roslin, to the deceased Yaxby Davidson, is entitled to a rateable proportion of that space or area of the church of Laswade appropriated to or occupied by the possessors of the barony of Roslin, corresponding to the lands so acquired; and that the pursuer, Colonel Saint Clair, as now standing in the right of the said barony, is entitled to the residue of the said space or area appropriated to the whole barony: and find that Miss Alexander and her author's possession of that double pew in the church of Laswade, which occupies about two-thirds of the aforesaid space or area appropriated to the barony of Roslin, gives her no further right, either of property or possession, than to a rateable proportion of her lands with the rest of the said barony: but, in regard it does not appear that there has been any regular division of the church, and that, from the proof, it appears that the said area or space, in its former and present state, has been possessed in common by Miss Alexander and her authors, and their servants, and by the other feuars, tenants, and servants of the remaining parts of the said barony; find, that the same common possession must be continued till such time as either a legal division of the whole church shall be obtained, or a subdivision between the pursuer and the defender, of that space or area appropriated to the whole barony, conform to their respective rights and interests therein."

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1777. February 7. The EARL of HOME, and other HERITORS of the PARISH of ECCLES, *against* The EARL of MARCHMONT, &c.

THE church of Eccles having become ruinous, the heritors agreed to rebuild it at the expense of near £400, and, for that purpose, entered into a contract with one of their own number. But this being objected to, by others of the heritors, as a plan too small, and unable to contain one half of the parishioners; and a suspension being presented to that effect, the Lord Kennet, Ordinary, 1st August 1772,—“Found, That it was so; and that a church would be necessary, capable of containing 1000 persons,—78 feet long, 37 broad, and 20 feet high; of which he appointed a plan to be made out, but without a steeple, except so far as was necessary for hanging a bell; and that it behoved to be seated, as well as built, by the heritors; reserving to any of the heritors or parishioners to contribute for an ornamental steeple, if they thought proper, without laying the burden upon such of them as do not choose to concur therein.” The church was built accordingly. The next thing was to divide it. After several meetings, the heritors could not agree. A process of division, there-