

1785. *November 24.*JOHN CATHCART and Others, *against* JAMES WEIR and Others.

No 16.

A regular and proper division of the area of a church presumed from long possession.

THE old parish church of Greenock was built in the end of the last century, some years after the erection of that town into a burgh of barony. The parish consisted likewise of a landward district, a part of which belonged to Sir John Schaw; and of the remainder another person was superior; between whom and the former, in consequence of a written contract, a division of the area of the church took place. Sir John's share was then, and has been ever since, occupied by the country tenants and town feuers of his estate, in distinct portions, on which their respective seats were fitted up. But if any regular sub-division was made among them, the evidence of it, as not now existing, must have been lost.

Such had been the situation of this church for more than double the years of the long prescription, when a recent set of feuers, in an action brought by them, contended for a new division of the area, according to their respective proportions of valued rent, *alleging*, That hitherto the area had not been regularly or legally subdivided.

The cause was reported by the Lord Ordinary, when

THE COURT were of opinion, That there was, from the long possession, sufficient presumptive proof of a regular and proper division; and therefore

THE LORDS assolizied the defenders.

Reporter, *Lord Braxfield.* Act. *Murray.* Alt. *M. Ross.* Clerk, *Hmc.*

S.

Fac. Col. No 240. p. 370.

1787. *June 22.*The MINISTER of the PARISH of TINGWALL *against* The HERITORS.

No 17.

The Court found that where it is necessary to build a new church, its dimensions must be such as will contain two-thirds of the examinable persons in the parish, not under twelve years of age.

THE Presbytery of Zetland having directed a new church of certain dimensions to be built in the parish of Tingwall, the Heritors brought those proceedings under the review of the Court of Session, by a bill of suspension.

THE LORD ORDINARY pronounced this interlocutor:

“ Finds, That when it becomes necessary to build a new church, the heritors of the parish are bound to provide one sufficient for the accommodation of the parishioners capable of attending public worship; and that this is a burden under which they acquired and hold their estates: Finds it admitted, That the parish of Tingwall does at present contain 209 families: Finds, That there are in it 847 persons capable of attending divine worship: Finds, That the church, as proposed by the heritors, is not of dimensions more than sufficient to accommodate 426 persons; and that the church, as proposed by the Presbytery, is of

dimensions sufficient to accommodate 585 persons: Finds, That a church of the former dimensions would be too small, and that the latter would not be too large, for the decent and convenient attending on divine worship in the parish of Tingwall."

No 17.

Against this judgment, the heritors preferred a reclaiming petition, in which they also insisted, that the form of the church proposed by the Presbytery was liable to considerable objections. After advising this petition, with answers given in, in behalf of the minister,

THE COURT were in general of opinion, That the plan of the building might be concerted among the heritors themselves, without the intervention of the Presbytery, whose only province it was, to see that the church was of a proper size for accommodating those who attended public worship.

The extent of the accommodation requisite for the number of parishioners was fixed in this manner; those were deemed examinable persons who were twelve years old, and the church was to be built in such a way as to be capable of containing two-thirds of the parishioners falling under this description. This was laid down as a general rule to be observed in all time coming.

THE LORDS found, " That the heritors of the parish of Tingwall are obliged to build a church capable of containing two-thirds of the examinable persons in the parish, not under twelve years of age, and remitted to the Lord Ordinary to proceed accordingly."

Lord Ordinary, *Henderland.* Act. *W. Robertson.* Alt. *Cha. Hay.*
Clerk, *Hume.*

G. *Fol. Dic. v. 3. p. 369. Fac. Col. No 335. p. 515.*

1793. May 16.

JOHN URE, and other Heritors within the Royalty of the Burgh of Forfar, against PATRICK CARNEGIE, and Others, Heritors of the Landward District of the Parish of Forfar.

THE parish of Forfar is composed partly of the royal burgh of that name, and partly of a landward district. The number of examinable persons within the burgh, and lands holding of it, amounts to 2965; the country district contains 765.

The old parish church having become ruinous, a new one was built, and an action was brought by some of the burgh heritors, in order to ascertain the manner in which its area should be divided.

The pursuers contended, that the church should be divided between the burgh and the landward district, in proportion to their respective population. The country heritors, on the other hand, insisted, that the area should be divided

No 18.

The area of a new church in a parish where there is both a royal burgh and a landward district, falls to be divided between them in proportion to their population.