

No 18. equally between the burgh and themselves, and that their half should be subdivided in proportion to their valuation.

It was understood, that the expense of building the church was to be defrayed according to the extent of area which each party should ultimately obtain.

The leading arguments on both sides were the same in substance with those stated in the report of the case of Crieff, 20th November 1781, No 15. p. 7924. and need not be here repeated.

The defenders likewise founded on a decree-arbitral in 1759, relative to the building a schoolmaster's house, and repairing the church, whereby it was declared, that in future the expense necessary for these purposes should be equally defrayed by the burgh and landward district; and it was contended, that this afforded evidence of the practice in bearing public burdens, and that therefore the benefit arising from them should be divided in the same proportions.

THE LORD ORDINARY reported the cause on informations.

One of the Judges, influenced by the practice of the parish, in paying parochial assessments in other cases, thought the area should be divided equally. The rest of the Court, however, were clear, that where a considerable town makes part of a parish, from the very nature of the thing, the division must proceed on the *ratio* of population. They considered this point as fixed by the decision in the case of Crieff above-mentioned, and in those of Campbletown, No 13. p. 7921, and St Andrew's, 25th May 1791. See APPENDIX.

It was accordingly found, "That the area of the church in question must be divided betwixt the heritors in the landward part of the parish and the burgh of Forfar, in a proportion effecting to the number of the parishioners in each, and that the expense of the building must be defrayed by the burgh of Forfar, and the landward part of the parish, in proportion to their respective shares of the area."

Lord Ordinary, *Henderland*. Act. *M. Ross, Jo. Millar, jun.* Alt. *Craigie*.
R. D. *Fol. Dic. v. 3. p. 371. Fac. Col No 52. p. 107.*

1796. June 21.

ROBERT SKIRVING and GEORGE YOUNG against ROBERT VERNOR.

No 19.
Suitable accommodation in that part of the area of the parish-church which belongs to

ROBERT VERNOR, in 1763, obtained a lease of a farm belonging to the Earl of Wemyss, in the parish of Inveresk. His Lordship's factor, at the same time, wrote a letter to him, mentioning, that as he had agreed to repair and keep in good order his Lordship's property in the church during the lease, he was in return to be allowed to possess or subset the whole of it.

Vernor's lease expired, and was renewed in 1783; and he continued to possess and let out the Earl's seats in the church as formerly, but without any express authority from his landlord. In 1794, however, Robert Skirving and George Young, who hold large farms in the parish under the Earl, of leases commencing in 1792, which give them right to the lands, 'with all liberties and freedoms belonging thereto,' presented, with consent of their landlord, a petition to the Sheriff, praying that the area in the church belonging to the Earl might be divided among his tenants, according to the rents paid by each.

No 19.
the landlord,
is held to be
included in
a lease of
lands.

A plan was accordingly made out, and the Sheriff ordered the division to take place in terms of it.

In an advocacy, Vernor, *inter alia*, disputed the title of the pursuers to insist in the division, as their leases gave them no express right to seats in the church; contending, that the area of the church is the property of the heritors, who may sublet it at their pleasure, and that, accordingly, the Earl of Wemyss had exerted that right, by his grant to the defender, which must be considered as renewed with his lease of the lands.

The pursuers

Answered; The right of an heritor in the the area of the church is not personal to himself, but is inseparable from the possession of the lands, and common to himself his family and tenants; the pursuers, therefore, would have been entitled to make their present claim, although their leases had not expressly given all the freedoms and liberties connected with the lands, and even in opposition to the Earl of Wemyss; but the clause in the lease, and the consent of his Lordship, make their case the more favourable. Besides, Vernor's grant of the seats has not been renewed along with his lease of the lands.

The Lord Ordinary reported the cause on memorials.

THE LORDS remitted 'to the Sheriff, to find, that the Earl of Wemyss's tenants in the parish of Inveresk are entitled to be accommodated with suitable seats in the parish-church of Inveresk, and to make a fair and equitable division of his Lordship's area in that church accordingly; and found Messrs Skirving and Young entitled to their expenses.'

Lord Reporter *Metbuen*.

Act. *Cullen*.

Alt. *Corbet*.

Clerk, *Sinclair*.

D. D.

Fac. Col. No. 224. p. 524.

See GLEBE.

See APPENDIX.