

1730. July 2.

MINISTERS and KIRK SESSION of MONTROSE *against* the MAGISTRATES of the TOWN, and HERITORS of the Parish.

No 6.

THE money arising from the ringing of the bells, and burying within the church does not properly belong to the poor, and therefore is to be burdened with the reparation of the church. See APPENDIX.

*Fol. Dic. v. 1. p. 527.*

1738. February 9.

HERITORS of the Parish of Selkirk *against* the DUKE of Roxburgh.

No 7.

THESE heritors raised a process against the Duke, in order to have it found, that he, as titular of the teinds of that parish, was bound to repair the third part of the kirk.

*Pleaded* in defence; There was no law which made the titular liable for the reparations of any part of the kirk, that being no burden on the teinds, but on the heritors, conform to their valuations. Indeed, where there is a quire, it hath been found the parson is bound to repair it; and, perhaps on the same foundation, where there is another titular of the teinds than the parson, he hath been found liable; but, where there is no quire, as is the case here, there is no instance known of either the one or the other's being obliged to repair the kirk.

*Answered*; That the provision, by our statutes, for burdening the heritors with reparation of churches, particularly by the 54th act, 3d Parl. James VI. is only a subsidiary or additional provision, but does by no means liberate those who were formerly subject by law before the Reformation; such as the parsons who received the rents and revenues of the church, or the profits and emoluments which arose therefrom by bells, burials, masses, &c. it having been always justly held, that the advantages arising from the benefit, or church itself, should contribute at least to the upholding of the fabric; conform to which, it was determined in the cases, Kirk Sessions of Montrose and Canongate against their respective heritors, (see *supra*). Besides, the last clause of the above act, touching the furnishing of communion elements, (which is generally understood to be in like manner imposed upon the heritors,) is a further evidence of this doctrine, since, notwithstanding thereof, by uniform practice, that burden is also laid upon the titulars of the teinds; though, no doubt, if these were exhausted, the heritors would be liable by the statute; which, though it introduces a new remedy, does not abolish the old one established by many authorities in the canon law; as appears from the title of the decretals, *De ecclesiis aedificandis vel reparandis*, chap. 1 & 4.

Reparation of the kirk is no burden on the titular of the teinds, further than his valuation.

No 7.

*Replied* ; The principles of the canon law can have no influence in this case, seeing it is no rule with us, in determining either real rights or real burdens ; more especially, considering that the disposition thereof varied greatly, both with respect to teinds and the reparation of kirks, which was owing to this, that the civil law of the different countries had not paid so great a regard to religion as to establish any civil rule for repairing of churches ; and therefore the Popes, and others, who made the canons, had no other remedy but to take care of these things out of their church funds, in the best way they could. But now these matters are on a different footing, the civil constitutions of every kingdom having laid down other rules for the determination of such questions ; and particularly, our law, as to the reparation of the kirks, stands upon the foundation of the acts of Parliament, according to which the defender does not decline to pay proportionally as his teinds are valued in the cess-roll. And, with respect to the decisions quoted, they are not in point, seeing nothing else was determined in either of these cases, but that the produce of the church, such as seat rents, was applicable to the reparation of the church, because to that extent it might repair itself ; and consequently, those liable in reparation were only thought to be bound, so far as the produce of the church was not sufficient for the purpose, which cannot apply to this question betwixt the heritors and the titular.

THE LORDS found the Duke of Roxburgh no further liable than conform to his valuation.

*C. Home, No 84. p. 137.*

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1739. February 20.

HERITORS of the Parish of Faulkland *against* the MINISTER and KIRK SESSION thereof.

No 8.

THE disposal of the area of the church was found to be in the heritors, and not in the minister and kirk session.

*Fol. Dic. v. 1. p. 527. Kilkerran, (KIRK.) No 1. p. 323.*

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1740. December 4.

THE MAGISTRATES and TOWN COUNCIL of Elgin *against* the MINISTER and KIRK SESSION.

No 9.

Nomination of kirk-officers, viz. beadle, session-clerk, and precentor ; and to whom the emolu-

THOUGH the *ostiarius* was, before the Reformation, a church-officer, yet that seems to have proceeded from this circumstance, that the churchmen had then the chief care of the fabric, which now is not the case ; and so it was here found, that the nomination was not in the minister and his session, but in the magistrates.