

No 5.

ing to the poor of the parish, as well collections as sums mortified for the use of the poor, and money stocked out upon interest, and have right to be present and join with the session in their administration, distribution, and employing such sums; without prejudice to the kirk-session, to proceed in their ordinary acts of administration and application of their collections to their ordinary and incidental charities, though the heritors be not present nor attend. But for the better preventing the misapplication or embezzlement of the funds belonging to the poor, found, that when any acts of extraordinary administration, such as the levying bonded money, or lending or re-employing the same, shall occur, the minister ought to intimate from the pulpit a meeting for taking such matters under consideration, at least ten days before holding of the meeting, that the heritors may have opportunity to be present and assist, if they think fit."

*Rem. Dec. v. 2. No 121. p. 250.*

1752. November 23.

GABRIEL HAMILTON of Westburn *against* The MINISTER and KIRK-SESSION of Cambuslang.

No 6.

Any of the heritors of a parish are entitled to call the kirk-session to account for their management of the poor's money. What are proper articles of discharge in the kirk-sessions' accounts?

THE pursuer brought his action as an heritor of this parish against the Minister and kirk-session, for exhibition of the accounts and count-books of the money and funds belonging to the poor of said parish; with a conclusion, that, in case it should appear that the defenders had misapplied the poor's money, to other ends and purposes than the law directs, they might be decerned to repeat the same to such persons as the Lords should appoint for behoof of the poor.

Upon production of the accounts, the following articles appeared stated to the discharge of the poor's money:

1. To a new tent for the field-preachings.
2. To the expense of repairing said tent from time to time.
3. To communion forms, tables, and table-cloths.
4. To rent for a preaching-field.
5. To constables and officers for attending to keep the peace at the sacrament.
6. To damages done to an heritor's dike, adjacent to the preaching field.
7. To the presbytery and session-clerks.

To these it was objected for the pursuer, that they were all misapplications of the poor's money, and could not be allowed to the minister or kirk-session, as proper articles of discharge of that fund.

*Answered* for the defenders; The minister and kirk-session, as well in their legal capacity of administrators of the poor's money, as from the implied consent of the charitable givers, have some discretionary power in the administration and disposal of what is collected at the places of public worship within the

parish. All the articles except the last were occasioned by the extraordinary confluence of people to this parish to attend divine ordinances; and as the benefit which arose from thence to the poor of the parish has been very great, it is highly reasonable that the expense of providing what was necessary for such public services, should burden those who had the only pecuniary benefit from them.

The small salary given to the session-clerk, for his trouble in keeping the books and accounts relating to the poor's money, is also a natural burden upon that fund. And what was paid to the presbytery-clerk is agreeable to the practice of most parishes in Scotland, there being no other fund for the payment of this petty salary.

*Replied* for the pursuer; The poor of a parish have a *jus quasitum* to the money that is collected for their use; and the heritors, who are by law burdened with the support of the poor, are but subsidiarily liable, in so far as the poor's proper funds fall short. The church and church-yard might have answered all the purposes of public worship to the parishioners and others who resorted there for religious service; and it is unreasonable to charge the poor's money with an expense which might have been saved, if too much encouragement had not been given to the assembling of mobs of people, to the dishonour of religion, and the real hurt of the country.

It occurred as a doubt to some of the Lords, whether this action was competent to one single heritor of the parish.

“ THE LORDS found, that it is competent to one heritor to bring a process against the kirk-session, for accounting for their management of the poor's money; sustained the defence as to the articles laid out for the purchase and after-repairs of the tent; and also the articles paid to the session-clerk; and found that the salary paid to the presbytery-clerk was illegal; but, in respect of the universal custom, found that the defenders are to have allowance thereof for time bypast, but not in time coming; and repelled the defences as to the hail other articles; and ordained the balance in the defenders hands, after deduction of what is above allowed, to be paid to the poor's box of the parish; and decerned against the defenders, conjunctly and severally, for payment thereof; and ordained diligence to pass to that effect against the defenders, at the instance of the pursuer, or any of the heritors of the parish.”

Act. *Lockhart.*

Alt. *Craigie et Macintosh.*

Clerk, *Pringle.*

M.

*Fol. Dic. v. 4. p. 85. Fac. Col. No 35. p. 55.*

1757. March 3. KIRK-SESSION OF INVERESK against KIRK-SESSION OF TRANENT.

DAVID BUTLER resided several years in the parish of Inveresk, as a day-labourer, during which time a daughter, Jean Butler, was born to him. After

VOL. XXV.

58 T

No 7.  
Where the  
place of a  
beggar's birth  
is known, his