

# APPENDIX.

## PART I.

---

---

### KIRK-YARD.

1777. July 4.

The MAGISTRATES and TOWN COUNCIL of GREENOCK, Pursuers, *against*  
JOHN SHAW STEWART of GREENOCK, Esq. Defender.

THE town of Greenock is a burgh of Barony holding of the defender, the ground upon which it is built having originally been a part of the estate of Greenock, feued off in parcels at different times to the inhabitants, by the defender's predecessors.

The old parish of Greenock is chiefly composed of the town, but includes also some adjoining lands in the country, belonging in property to the defender, and to another heritor, Crawford of Crawfordsburn. The defender's valuation amounting to £2062. 8s. 8d. Scots; Crawfordsburn's to £223. 6s. 8d. Scots; these two sums together make £2285. 15s. 4d. Scots, the total valuation of the parish.

The town of Greenock has for a considerable time past been gradually extending itself and increasing in population. Hence, sometime ago it became necessary for them to subdivide the parish, and to have another church, the old one being insufficient to contain the inhabitants; and for this and some other public works they, in the 24th George II. obtained an act of Parliament laying a duty of two pennies upon the pint of ale brewed or vended in the place. And as the old church was inadequate to the parish, so, as early as the 1721, it had also become necessary to add considerably to the old church-yard; and the ground for that purpose was gifted to the town by the late Sir John Shaw. The church-yard, however, even with this addition, was still somewhat less than an acre, and by degrees this also became rather too scramp for the inhabitants.

#### No. 1.

Additional burying ground necessary for a parish, partly landward, and partly composed of the inhabitants of a populous Burgh of Barony, must be furnished by the heritors having ground proper for that purpose: And they are to be indemnified by the other heritors, and by the community, in proportion to the examinable persons within the parish.

See No. 2.  
p. 8019.

- o. 1. Upon an application being made to Mr. Shaw Stewart, he signified his willingness that a proper addition should be made to the burying ground, and that a part of his property be allotted for that purpose, upon certain terms : But these not being agreeable, an action was instituted in name of the Magistrates and Council of Greenock, as representing the community, setting forth that their present church-yard contained only three roods seven falls and nineteen ells of ground, which was insufficient for the purpose ; and therefore concluding against the defender, as proprietor of all the ground adjacent to the said church-yard, to set off what was sufficient for burying the inhabitants of the town and parish of Greenock, “ and the said ground so set off, ought and “ should be adjudged to be part of the common burial place of the said town “ and parish of Greenock, and the management thereof vested in the kirk “ session of the old and new parishes of Greenock.”

The summons also contained a conclusion in these words : “ And in case the “ said John Shaw Stewart shall be found entitled to any recompence from the “ other heritors and feuers, in the said old and new parishes of Greenock, “ then, Archibald Crawford of Crawfordsburn, William Donald, feuer at “ Glen, &c. (naming a variety of other feuers in and about the town of “ Greenock), ought to be decerned to pay the said John Shaw Stewart their “ respective proportions of the said recompence.”

The Lord Ordinary, after some procedure before him and a proof led by both parties, pronounced an interlocutor importing, *1mo*, That the providing burying ground is a burden which nature, law, and reason, lays upon the heritors of every parish ; that the ground most commodious for the purpose falls to be appropriated ; and that the value of the ground ought to be paid to the proprietor by the several heritors of the parish conform to their valued rent, he himself bearing his own proportion ; *2do*, That it is proper the ground to be set apart by way of addition shall be contiguous and adjoining to the present church-yard, and that it is proper it should be of a dry soil ; and, *3tio*, Finding that the ground pointed out by the pursuers for that addition, is more proper than that proposed by the defender, and appointing the same to be set off and walled decently with all convenient speed.

The defender reclaimed, *1st*, As to the situation of the ground ; alledging, that the demand made by the pursuers to have a piece of ground called the kirk town-yards was unreasonable and unjust, and the allocation of it would greatly hurt his property ; and that their objection to the ground he proposed on account of wetness could be easily removed by draining ; neither was it necessary or expedient that the additional church-yard should be contiguous to the old one ; and that it would be more for the benefit of the living, if it were laid off at some distance from the town ; *2dly*, As to the value to be given for the ground ; and *3dly*, At whose expense it ought to be furnished, and which, he contended, ought in part to be defrayed by the community, as well as the landward heritors.

The Court considered this to be a case altogether new, to which the common rules would not apply, and therefore it behoved them to settle it upon equitable principles.

“ The Lords found, that the additional burying ground necessary for the  
“ parish in question must be furnished by the heritors thereof having ground  
“ proper for that purpose: But found that the heritors who furnish the same  
“ must be indemnified by the other heritors, and by the community of the town  
“ of Greenock, in proportion to the examinable persons within the parish,  
“ residing upon their estates, and within the community, respectively: And  
“ ordained the defender Mr. Shaw Stewart to give in a condescence of the  
“ ground he proposes to furnish, both as to quantity, situation, and price de-  
“ manded by him.”

Against this decision a reclaiming petition was presented, to which answers were given in; but before advising, the dispute was settled, in consequence of Mr. Shaw Stewart's accepting an offer of the new kirk session, to feu a piece of ground from him for the purpose, and to take the risk of indemnifying themselves, by disposing of it in small quantities among the inhabitants.

Act. *G. Brown.*

Alt. *Ilay Campbell.*

Clerk, *Campbell.*

*J. W.*

