

the person whose ground is taken is entitled to have the value refunded to him by the several heritors, conform to their valuations, he himself bearing his own proportion thereof."

The case was new, and it did not appear to have been formerly decided. Greenock was a burgh of barony, the property of Mr Stewart, or holding of him. They had built a church by subscription; but the inhabitants of the Town increasing, to the number of about 12,000, the church-yard was found too small for burying the parishioners. They applied to Mr Stewart for an addition to the church-yard, who was willing to give it; but they differed about the situation of the additional ground, and also, whether a price should be given for it,—what that price should be, by whom it should be paid, and under whose management the church-yard should be, and to whom the price of lairs in the church-yard should be paid.

On a petition, reclaiming against Lord Auchinleck's interlocutor above-mentioned, and answers for the Magistrates of Greenock, the Lords found, (4th July 1777,) "That the heritors of the parish are bound to furnish ground for the church-yard of the parish, sufficient and properly situate for that purpose: That the heritor furnishing the ground is entitled to be indemnified by the other heritors, and by the community of Greenock, in proportion to the number of examinable persons in the community, and on the estates of the heritors; and, before further procedure, appointed Mr Stewart to condescend, and say what extent of ground he was willing to give for the above addition, where it was situated, and what price he demanded for the same.

After some further procedure about the situation and price of the ground, &c., the whole was carried by appeal, at Mr Stewart's instance, to the House of Peers; and, 4th March 1779, the whole interlocutors were reversed: it was said there was irregularity in the proceedings. New action was reserved.

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1778. *December 2.* HAY and LOW *against* MR ANDREW WILLIAMSON, Minister at ARNGASK.

IN the process, before the Sheriff of Fife, between Mr Andrew Williamson, minister at Arngask, and two of his heritors, the Sheriff found, "That the Minister was only entitled to cut the grass in the church-yard, but not to pasture his bestial thereon; and therefore discharged him from doing so." Lord Braxfield refused a bill of advocation, (23d July 1778;) and, this day, (2d December 1778,) on bill and answers, the Lords adhered.

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1778. *December 5.* CUNNINGHAMS *against* ALEXANDER CUNNINGHAM.

ALEXANDER Cunningham, portioner of Fountainbridge, having buried his wife in a part of the church-yard of Currie, where his ancestors had been buried, proceeded to cover her grave with a grave-stone. This was opposed

by his relations, who insisted that they had the property of the said burying-ground; and that although Mr Cunningham had laid his wife there, yet they would not suffer him to cover her grave with a stone, which was in effect withdrawing so much of the ground from being employed to the purpose of burying. In a process before the Sheriff; without determining the property, the Sheriff found this proceeding rather peevish, and, as the contest was not so much about the right to bury, as to erect a grave-stone, that there was no good reason why Mr Cunningham should be denied that pious satisfaction. But, in passing a bill of advocacy, Lord Covington remitted the cause to the Sheriff with this instruction, (21st July 1778,) "That he find, That the property of the church-yard, as of the church itself, belongs to the heritors, having property lands in the parish, as part and pertinent of their property lands, for the interment of those in their respective families, and other inhabitants upon their several properties; and those who neither are heritors nor reside within the parish, have no right to be buried, or to bury those of their families who did not reside in the parish, in the church or church-yard, without consent of the heritors; and, as it stands confessed that Mr Cunningham was no heritor, nor had his family residence within the parish at the time of his wife's death, several months ago,—the interment of his wife within the controverted part of the church-yard of Currie, without permission of the heritors, does not entitle him to erect a tomb-stone over his wife's grave, whereby so much of the common area of the church-yard would be withdrawn from the public or common use, and appropriated to the defender; and therefore, to find that he has no right to erect a tomb-stone without consent of the complainer and the other heritors; and, as no such consent is alleged, to prohibit him to do so."

And to this interlocutor the Lords, upon advising bill and answers, adhered; (5th December 1788.)

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## CLERKS OF SESSION.

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1771. *August* . FEUARS of MEARNs MUIR, Petitioners, *against* SIR ROBERT POLLOCK, &c.

THE clerks of Session are entitled to certain dues in all processes which have depended in Court. But as these were frequently evaded by settlements and transactions between the parties, this was considered to be an act of injustice, and a remedy was provided against it, first by the regulations 1672, and afterwards by the regulations 1695, Art. 5; the last giving the Clerks a hypothec, or right of retention, to the pieces produced in process.

Several years ago the Clerks were laid under the necessity of applying to the Court to recover their fees in certain causes, of which the parties or their agents meant to disappoint them. See Acts of Sederunt 20th July 1753, and other instances, against *Gabriel Napier, William Russell, &c.* And the com-