

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.*

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.*

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.