

*cessariæ ipso jure minuunt fructus rei locatæ et mercedem inde debitum.* DUPLICED,---The annualrenters protested at the roup that these articles should not prejudge them.

The Lords found, That such creditors as were not infeft in the coal, but in roums where the coal was not wrought, had no concern to be burdened with the expense in seeking the coals, but behoved to get their annualrents effeiring to the rents of these roums in which they were infeft. *Vol. II. Page 40.*

1699. *February 2.* CUNNINGHAM of BOQUHAN *against* The LAIRD of LECKIE.

THE Laird of Leckie, having procured a visitation of the Presbytery of Stirling, in 1687, of the church of Gargunnoch, he was permitted to erect a loft above Cunningham of Boquhan's seat in that church, which darkened and obscured his sight; and Boquhan, procuring a new visitation since the Revolution, to get himself redressed of the injury done him, because he was of the Presbyterian persuasion, and Leckie having raised an advocation, the Lords, by an act, before answer, took trial of the affair;—and this day, advising the probation, Found sundry encroachments had been made on Boquhan's seat and burial place, and the scutcheons of his family removed, and stoops posted on their graves, &c.: Therefore reduced that visitation; and ordained the loft to be taken down, and the church to be put in the same case it was in before; and, lest there should be any opposition, commanded the Sheriff of Stirling to see it executed; and, if he were remiss in doing it betwixt and the 20th of February, then appointed letters of horning to be directed against him for that effect.

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1699. *February 3.* CLERK *against* JOHN WARDEN.

JOHN Warden, and one Clerk, being heritors, *pro indiviso*, of a piece of land, there is a division, by the Sheriff of Lanark, made in 1653; and, in prosecution thereof, a contract entered into by a letter of couch, whereby marches are set betwixt them. One who marries Clerk's daughter, and thereby gets his share, pursues for a new mettage and division. Warden ALLEGES,—The Sheriff's division, and the contract thereon, must be the rule; and there can be no new division, which is sought from no other design but *in æmulationem vicini*; because Warden has much bettered and improven his half, and Clerk, by his sloth, has deteriorated his. ANSWERED,---The contract may bind the parties entering therein, but not the pursuer, who is a singular successor, having right thereto by contract of marriage, and knows nothing of that private agreement; *et rerum dominia non transferuntur nudis pactis sed traditionibus*; and, by our law, no foot of ground can be possessed in Scotland without a seasine, except minister's glebes; *Nulla sasina, nulla terra*; and, in case of excambion of small parcels of