

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

The Lords found, That such creditors as were not infeft in the coal, but in rooms 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 rooms 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

lands, they must either be completed by infestment, or, if they cannot bear that expense, then lawyers devised the doing of it by way of mutual tack, for some hundreds of years ; which is equivalent.

The Lords found, This contract, never being perfected by infestment, did not oblige the singular successor, nor transmit the property. But it being informed that the march-stones were removed, the Lords thought such a delinquency as deserved to be inquired into ;—a curse, by the divine law, being pronounced against the remover of land-marks ; and, by the twelve tables, *qui terminos ex-arassit diis sacer esto* ; and, by the title *de Termino moto*, it is punished arbitrarily. Anent Molestation of Marches, see Act 42, 1587. *Vol. II. Page 40.*

1699. February 10. HELEN FERGUSON against DURHAM of LUFNES.

HELEN Ferguson pursues Durham of Lufnes for spuilie and ejection, by seizing on her goods and corns, and thrusting herself and family out of the houses. ALLEGED,—George Hogg, her husband, having been his tenant, and dying much in his debt, the said Helen, his relict, gave bond for £2200 as the arrears, and a full disposition to her goods and gear for his better security, authorising him to enter into possession without hazard of spuilie ; *et quævis causa excusat a delicto*. ANSWERED,—The disposition can never defend, for *nemo debet sibi jus dicere, ne majoris tumultus occasio detur* ; but his entry should have been *authore prætoræ*, by a warrant from the Sheriff. 2do. The disposition relates to an inventory, and yet he meddled *per universitatem* with the whole. 3tio. He intromitted before the term of payment of the bond ; which was most unwarrantable. REPLIED,—He needed no other warrant than what was contained in the disposition, her possession being merely precarious, and which he might recal at any time. To the *second*, The mentioning an inventory was not restrictive, but demonstrative of his right to all *per aversionem*, aye and while he was paid. And, as to the *third*, He behoved to secure her goods ; because he offers to prove she was absconding herself and embezzling her goods, conveying them privately away under night ; and therefore he employed people to cut down the corns, and required her, by way of instrument, to come and oversee the same, and to name some honest neighbours to appreciate them.

The Lords thought Lufnes had been too precipitant in meddling, before the term of payment, without applying to a judge, or at least holding a baron-court, and leading probation anent her embezzlements, whereon he might have arrested her goods and corns : and remembered, that, in *Bruce of Bordie's pursuit* against *Keirie of Gogar*, the Lords found a disposition to the crop and goods purged a spuilie ; yet the intromission was so far found unwarrantable that they modified the corns at the highest prices : Therefore, in this case, the Lords allowed a mutual probation as to her withdrawing herself and abstracting her goods, and as to what the roum would sow, and what was the extent of the product, and if he used any pouding, before they would determine whether she should have her oath *in litem*, or if he shall be only countable for his super-intromission above his own payment.

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