

fore, was brought before the Sheriff, which, after some procedure, was attempted to be advocated.

In this process, it was established, by the opinion of the Judges, that the division of the area of a church must proceed according to the valuation of the different heritors: That such process was competent before the Sheriff: That, where there were lofts, it was right to divide these for family-seats among the principal heritors, and the back seats and low seats among their tenants, respectively, placing every heritor's tenants in one place: That, as to the lofts, or better seats, the patron was entitled to the first choice, as had been found in the case of Torpichen; (in the case of Torpichen, Lord Torpichen was superior of a considerable part of the parish, proprietor of a small part, and patron. The Lords found him entitled to the principal seat, in preference to Mr Gibson of Wallhouse, a greater proprietor, and having all claim competent to Lord Hopeton, another considerable proprietor;—4 *New Coll.*, p. 13;) and the other heritors to their choice, successively, according to their valuations; and that the family-seats given to the heritors behoved to be added to the tenants' seats, in computing the share which each heritor was entitled to have of the whole area.

This day reclaiming petitions from both parties having been advised, with answers, the Lords refused both, and adhered.

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1776. July 10. LIVINGSTON of PARKHALL *against* The YORK-BUILDING COMPANY.

In a process betwixt the York-Building Company and Livingstone of Parkhall, the Earl of Calendar having feued out lands to Livingston's ancestors, "excepting and reserving to the said Earl liberty and privilege to win coal, lime, and limestone, make stank-holes, and sink-ways and passages, for payment of damages, at the sight of two honest men;" this clause was found, by Lord Kaimes, Ordinary, 31st January 1776, to constitute a right of property to the York-Building Company, Lord Calendar's successors, in the coal in question. And the Lords adhered.

See same point, *Magistrates of Innerkeithing against Mowbray of Cockairny*, 21st January 1778.

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The GOVERNORS of HERIOT'S HOSPITAL *against* WALTER FERGUSON.

JOHN Cleland, in the year 1784, feued, from Heriot's Hospital, about five acres of land, formerly called Broughton-loan-head, and in his charter was the following clause:—"Providing always, likeas it is hereby provided and declared, that it shall not be leisome to the said John Cleland and his foresaids, to dig for stones, coal, sand, or any other thing within the said ground, nor to