She again alleged a verbal grant of that share from Colonel Saint Clair's author, and exclusive possession for more than 40 years. The Lords seemed generally of opinion, That, where a church was not divided legally, possession was the rule, until a legal division should be made; but, in this case, they thought the possession rather promiscuous, and therefore they pronounced this interlocutor, 22d November 1776:—"Find that the defender, Miss Alexander, *qua* proprietrix by progress, of those parts of the lands of Roslin, granted in feu by William Sinclair of Roslin, to the deceased Yaxby Davidson, is entitled to a rateable proportion of that space or area of the church of Laswade appropriated to or occupied by the possessors of the barony of Roslin, corresponding to the lands so acquired; and that the pursuer, Colonel Saint Clair, as now standing in the right of the said barony, is entitled to the residue of the said space or area appropriated to the whole barony: and find that Miss Alexander and her author's possession of that double pew in the church of Laswade, which occupies about two-thirds of the aforesaid space or area appropriated to the barony of Roslin, gives her no further right, either of property or possession, than to a rateable proportion of her lands with the rest of the said barony: but, in regard it does not appear that there has been any regular division of the church, and that, from the proof, it appears that the said area or space, in its former and present state, has been possessed in common by Miss Alexander and her authors, and their servants, and by the other feuars, tenants, and servants of the remaining parts of the said barony; find, that the same common possession must be continued till such time as either a legal division of the whole church shall be obtained, or a subdivision between the pursuer and the defender, of that space or area appropriated to the whole barony, conform to their respective rights and interests therein."

1777. *February* 7. The EARL of HOME, and other HERITORS of the PARISH of ECCLES, *against* The EARL of MARCHMONT, &c.

THE church of Eccles having become ruinous, the heritors agreed to rebuild it at the expense of near £400, and, for that purpose, entered into a contract with one of their own number. But this being objected to, by others of the heritors, as a plan too small, and unable to contain one half of the parishioners; and a suspension being presented to that effect, the Lord Kennet, Ordinary, 1st August 1772,—"Found, That it was so; and that a church would be necessary, capable of containing 1000 persons,—78 feet long, 37 broad, and 20 feet high; of which he appointed a plan to be made out, but without a steeple, except so far as was necessary for hanging a bell; and that it behoved to be seated, as well as built, by the heritors; reserving to any of the heritors or parishioners to contribute for an ornamental steeple, if they thought proper, without laying the burden upon such of them as do not choose to concur therein." The church was built accordingly. The next thing was to divide it. After several meetings, the heritors could not agree. A process of division, there-

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.

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

In a process betwixt the York-Building Company and Livingtone 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*, 21*st January* 1778.

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