1748. *June* 2. DAVIDSON *against* KERR.

No 6.

A DIVISION being pursued before a Sheriff, of lands whereof some lay runrigg, and some were commonty; in respect that by the 38th act 1695, the dividing commonties is committed only to the Court of Session, though by the 23d act 1695, the dividing runrigg may be pursued before the Sheriff; we passed an advocation of the process; but resolved to remit to the Sheriff as usual to make the division, but to be reported to this Court. (See JURISDICTION—RUNRIDGE.)

1748. *June* 3.
Sir GEORGE STEWART of Grandtully *against* Mr. JOHN M'KENZIE of Delvin.

No. 7.

AFTER a hearing in presence on the import of the 38th act 1695, found that where one has a right or servitude of pasturage, on grounds the property of another, promiscuously, or in common with the proprietor, a process of division may lie for dividing, (not the property,) but the superfice, in proportion to their respective interests in the superfice, the property still remaining as it was, and without any *præcipuum* to the proprietor, and the division to be not in proportion to the parties valuations, but in proportion to their rights of pasturage; and this notwithstanding the judgment in Sir Robert Stewart's case on the preceding page, (No. 4.) which we would not alter, for this seems rather upon the common law than the statute. (See DICT. No. 10. p. 2476.)

1752. *December* 15.
Mrs. BALFOUR of Burleigh *against* MONCRIEF of Reddie, &c.

No. 8.

A BARONY was found not entitled to a proportion of the commonty corresponding to the valuation of the whole Barony, which often comprehends not only lands discontiguous and lying at great distances from each other,

No. 8. but also often subjects of their own nature not capable of a share of a commonty, as rights of annualrent, servitudes, patronages, jurisdictions, fishings, mills, &c. but only to a proportion corresponding to the valuation of that part of the Barony that was in use to possess the commonty. (See DICT. No. 12. p. 2479.)

See NOTES.