

No 2. contiguous, and not run-rig, did not fall under the act for dividing of lands lying run-rig." See APPENDIX.

Reporter, *Lord Tinwall.*

Act. W. Pringle.

Alt. J. Philp.

Fol. Dic. v. 4. p. 246. D. Falconer, vol. 1. p. 21.

1755. November 13. The HERITORS of Inveresk *against* JAMES MILNE.

No 3.

A large tract of ground round the village of Inveresk belonged to many proprietors, whose properties lay run-rig. James Milne was proprietor of part of the run-rig lands, and particularly of six acres lying together in an oblong form.

Some of the proprietors having brought an action of division of these grounds, upon the act of King William anent run-rig, James Milne opposed the division as to his six acres which lay together; and *objected*, That the act was confined to the division of grounds lying in alternate ridges; but could not be extended to several acres of ground lying together.

"THE LORDS repelled the objection, and ordered the division to proceed."

Act. Sir John Stewart.

Alt. And. Pringle.

J. D.

Fol. Dic. v. 4. p. 246. Fac. Col. No 162. p. 243.

1766. November 21. WILLIAM BUCHANNAN *against* JOHN CLARK.

No 4.

The act 1695 found not to apply where the fields required to be divided amounted to 13 acres.—

WILLIAM BUCHANNAN and John Clark were proprietors of the lands of Little Udston, which consisted of 112 acres, partly infield, partly outfield.

The infield land consisted of three fields of 13, 29, and 41 acres, two of which, being the fields of 13 and 29 acres, belonged to Clark, the other of 41 belonged to Buchannan.

John Clark being desirous to have his two fields inclosed, and that Buchannan should be subjected in half the expense, brought a process before the Judge Ordinary, founded on the 41st act, 1st session, 1st Parliament of Charles II. subsuming, that he was about to inclose several parts of the lands of Little Udston, and particularly two fields, one of 13, and the other of 29 acres, which lay conterminous to William Buchannan's lands, and concluding, that Buchannan should be decerned, in terms of the act, to bear an equal expense in raising a fence to divide their inheritances.

It was *pleaded* in defence, That as the lands required to be inclosed lay run-rig, the act of Parliament above founded on could not apply, until the lands were divided; and, in order to obtain a division, Buchannan brought a process against Clark, founded on the act of Parliament 1695.

Pleaded for Clark, That the intention of the Legislature, by the act 1695, was to prevent the inconveniencies which arose from people being obliged to possess acres that are interspersed, and which, therefore, could not be properly cultivated; but did not apply to the present case, as the smallest of the fields belonging to him consisted of 13 acres.

The Judge-ordinary pronounced an interlocutor, finding the ground craved to be inclosed by John Clark did not fall within the act made anent run-rig, and William Buchannan liable in the one half of the expense of inclosing; and that he ought to concur with John Clark in making a proper fence upon the march which divides their respective properties, &c.

Of this interlocutor Buchannan complained by an advocation, and *pleaded, 1mo*, That the act 1695, being introduced for the improvement of the country, by planting and inclosing, and having nowhere particularly defined what is meant by run-ridge, ought to receive a most liberal interpretation, as in practice it generally has done in cases that came to be determined by the Court, similar to the present, particularly in the case of the Heritors of Inveresk, 13th November 1755, No 3. p. 14142.; and in the case of Chalmers against Pew, No 12. p. 10485. in which the act was found to extend, not to lands belonging to different proprietors only, but to all fields lying run-dale, without regard to their shape or extent; for, in the one case, a field of six acres was found to fall within the act, and, in the other, fields of two or three acres were found to fall within it; and as fields of six acres cannot, strictly speaking, be denominated run-rig lands, more than fields of 12 acres, so, where the inconvenience is the same, the same remedy ought to be applied; that, in this case, the inconveniency could not be disputed, seeing it would not be denied, that Clark had no road from one of his fields to the other, but through Buchannan's grounds.

2do, It was *contended*, That the act 1661 did not apply to the present case in respect that the whole rent of the half of the lands belonging to Buchannan, both outfield and infield, amounted only to L. 4 : 6 : 10½; and it was said that it was the rent, and not the extent, of the ground, which ought to be considered in the present question; and if so, the case of Dr Penman *contra* Douglas and Cochrane, 3d July 1739, No 9. p. 10481., might be appealed to, where it was found, that the act 41st Parliament 1661, burdening the heritor of the adjacent ground with the half of the expense of the march-dyke, did not reach small feuars, who had not above five or six acres of ground.

Answered, That, if a division of the fields in question was to take place on the act 1695, there would be no knowing where to stop, as, with equal reason, might two proprietors, who have their estates interspersed, apply for a division of such, however large the same might be; a case which was never supposed to fall within the act, although, no doubt, it would be more convenient; that the act 1695, which, in the cases to which it applies, obliges a man to part with his property without his consent, being in some measure an encroach-

No 4.

ment upon it, ought not to be extended; that the division demanded by Buchanan was highly unreasonable, as the extent of the smallest of the inclosures surpassed what an ordinary inclosure generally consists of. Neither could he be in the least degree aided by the two decisions to which he appealed; because, in both cases, the lands thereby found to fall within the act 1695 were a long small strip, which could not be inclosed separately, as they lay, without an expense superior to their worth; whereas the ground required to be divided by the present action consisted of three fields, the smallest of which extended to 13 acres.

To the *second* reason of advocacy, it was *answered*, That Buchanan undervalued his ground much; but even allowing that he had not done so, yet there was no doubt, that the action founded on the act 1661 is properly brought. The great object of that act is the improvement of uncultivated grounds; and wherever such are of so great an extent, as to be fit to be inclosed with advantage to the heritor, they certainly fall within the spirit and words of it; and the decision in Dr Penman's case did not weaken the doctrine pleaded; because it was only thereby found, that the act did not reach small feuars, who had not above five or six acres of ground; whereas, as in this case, Buchanan is proprietor of 55 acres of the lands of Little Udston, and also of a part of the lands of Blantyre, which lie contiguous to, and march with his lands of Little Udston.

THE LORD ORDINARY found, "that the three fields required to be divided by the act 1695, did not fall under that act; and therefore, repelled the reasons of advocacy, and remitted the cause simpliciter; to which interlocutor the LORDS adhered; and refused a reclaiming bill, without an answer."

Act. Maclaurin.

Alt. Macqueen.

J. S. Tertius.

Fol. Dic. v. 4. p. 246. Fac. Col. No 47. p. 83.

1774. January 28.

DAVID RUSSEL and Others, Feuars of Tranent *against* The GOVERNOR and COMPANY of UNDERTAKERS for raising the Thames water in YORK-BUILDINGS, and Others.

No 5.
Benefit of the statute 1695 is competent to feuars even against their superior, without regard to the circumstance of some of

IN the neighbourhood of Tranent, there is a tract of ground of about 500 acres, partly belonging to feuars from the family of Winton, and partly to the York Buildings Company as purchasers of the forfeited estate of Winton, comprehending, *inter alia*, the barony and burgh of barony of Tranent.

As matters stood at present, there were in all twenty-six feuars of Tranent, vassals to the York Buildings Company, the original number being reduced from the rights of different feus or plots having come into one person. Of these,