division should stop; because there were lands belonging to eight different proprietors, which lay contiguous, that is, not in separate parcels, and from which, it was contended, they could not be removed. The question was truly the same which occurred in the case of Inveresk, 13th November 1755, with this single difference, that, in place of only one single property intervening to stop the division, here there were several. But the Lords, on report of Lord Kaimes, repelled the objections to the title of the pursuers, and to the competency of the action, and allowed the division to proceed: and repelled the objection, that the eight feuars have their several properties in one plot, each by themselves, and cannot be transported from one station to another; and found that it was competent to the Commissioners, in making the division, to set off the shares of the parties on either side of the town, as shall be most convenient for the general interest, and without regard to the place where their respective possessions were before the division.

And, on reclaiming petition and answers, the Lords adhered.

1777. *January 22.* DOUGLAS of DOUGLAS and THOMAS FORREST *against* INGLIS and other FEUARS in DOUGLAS.

THE burgh of Douglas is a burgh of barony holding of the family of Douglas. From time to time the family had feued out houses and yards, and other pieces of lands adjacent to the burgh, to the different feuars. The feuars had, besides, a right of servitude of pasturage, &c. on the commonty of Douglas. But then the subjects of the feu were specially designed and bounded in the several feu-rights. Mr Douglas was superior of the whole, and proprietor of a part of the run-rig lands, and he was superior and proprietor of the common, subject to servitudes.

In process of time, many of the pieces of land feued out, having past through several hands, and been acquired by different persons, became parcelled out into many pieces, and lay in many places run-rig. And this situation of the lands being found inconvenient, Mr Douglas, and one of the feuars, raised a process of division, first of the run-rig lands, and next of the commonty: the libel did not set forth specially the statutes 1695, c. 23, and , but made a general reference to the statutes for run-rig and division of commons. As to the runrig lands, it was doubted how far, where portions of land are feued out, specially marched and designed, and so far as they extend, lying contiguous, whether these could be reckoned run-rig, in a process of division at the instance of the superior who had feued them out, and who seemed to be debarred from pleading that they were run-rig, even supposing they were so, by being afterwards divided among different proprietors. And further, it was doubted how far a special contiguous property, which remained the case with others of them, could be forced into a division of run-rig; or fall under the Act 1695.*

* Parties did not agree, whether the lands, when feued out, were run-rig, or whether they only became so by after purchases.

As to the last observation, the decisions of the Court were quoted in answer; particularly the case of Tranent. This decision was approved of; and although, in that case, the vassals pursued the division, and were opposed by the superior,—and, in this case, the superior and one of the vassals pursued the division, and were opposed by the rest; this made no essential difference: a superior, provided he was part proprietor, was entitled to bring this division as well as any other.* And, as to the first part of the observation, besides what was already observed, there did not appear any personal objection to debar the superior from prosecuting the division, unless that thereby it could be alleged, that there was an infringement upon the warrandice. 22d January 1777, "The Lords, on report of Lord Auchinleck, repelled the objection to the process, so far as concerned the run-rig lands; and found that the division thereof, upon the Act 1695, may proceed."

In reasoning on this cause, the Lords held, that the exception of burrow acres, in the Act 1695, related only to the case of royal burrows, and had been so constructed in practice. Lord Monboddo held the contrary.

1780. *July* 14. ANDREW MORISON *against* DRYSDALE.

MORISON pursued Drysdale for a division, on Act 1695, anent run-rig. Morison's property lay in two small parcels, cut by Drysdale's property, which surrounded the westmost parcel, and divided it from the east; but then Drysdale's property lay all contiguous, in the form of a crescent, surrounding Morison's eastmost parcel, and dividing it from the west. Morison's two parcels were small;—the westmost about acres, the eastmost about , intersected by part of Drysdale's property, about acres. The Sheriff found that the statute did not apply, the lands did not lie run-rig; Drysdale's property lay contiguous, not cut by Morison's, but having Morison's in its bosom. The Lord Westhall, Ordinary, in an advocation, remitted the cause *simpliciter*: and the Lords adhered.

* At any rate, this objection struck only at Mr Douglas, one of the pursuers, who was superior, but not at Mr Forrest, the other pursuer, and who was one of the feuars.