

Diss. Monboddlo. [Gardenston, though he spoke for the pursuer, was convinced, and voted against him.]

1777. January 14. JAMES GRAY *against* WILLIAM WARDROP.

RUNRIDGE.

The office-houses belonging to the proprietors of Runridge Lands cannot be included in the division.

[*Fac. Coll., VII. p. 348 ; App. I., Runridge, No. 1.*]

COVINGTON. I cannot enter into the views of parties. One may use a *right* to the prejudice of his neighbour, but the law will not interpose. Offices are part of the mansion-house in the eye of the law : if you strip the mansion-house of them, you leave the house bare. If we go on interpreting the law, we shall at length lose sight of it altogether. The houses proposed to be allotted to Wardrop are old and ruinous. The division of run-rig lands is most common in country villages : Would you in such case adjudge the offices of one man to another ?

BRAXFIELD. Offices are part of the mansion-house and policy. The old house proposed to be given off as offices, is the mansion-house belonging to one half of the lands ; so that in effect a mansion-house is here sought to be brought into the division. Wardrop could not force Gray to give this ; and therefore Gray cannot force Wardrop to take it.

JUSTICE-CLERK. I am acquainted with the ground, and cannot but think that the opposition made by Wardrop is improper. Such salutary laws as that in 1695 ought to be liberally interpreted. I am not for starting difficulties about every little office-house. There are old kilns and barns in different fields : if they are not allotted *hinc inde*, roads must be left to them, which will be the same thing as if no division at all had been made. Why not allow a barn or a byre to be allotted to one or other party ? The law does not consider prospects, but still it is emulous to hinder prospects. The reason and spirit of the law does not apply to offices of this nature, and we must determine every case according to its own circumstances.

HAILES. I should be sorry to see so loose an interpretation given to the Act 1695 as that of finding that office-houses are not comprehended within mansion-houses and policy. In this age of elegance, the kitchen is often out of doors, and not within the mansion-house : Would you, in order to better a prospect, or square the ground, take a man's kitchen from him and give it to his neighbour ? A little-house is part of the offices of a house, and it is, by way of excellence, termed in English a *necessary* : Is it also for the sake of convenience to change its master ? I cannot see how a distinction can be made between the

stables of the most opulent man and the byre of the meanest? There must be one general rule, and if the legislature sees that rule to be inconvenient, it will give us a new law; but in the meantime we must judge according to the old one. The difficulty of kilns and barns scattered over the ground does not affect me, for such things may be considered as adjuncts or pertinents of the fields, and will be divided along with the fields, just as shades for cattle and other accommodations of a farm; but they are very different from office-houses connected with the mansion-house and possessed along with it.

KAIMES. This matter goes deep into the principles of property. Here is a division of run-rig: How can we divide houses?

GARDENSTON. [At the first hearing, not present at the second.] I have great difficulty of going the length of the exchange of offices upon the authority of the Act of Parliament. There are bounds to be set to the interpretation of the most beneficial statutes. Offices are part of the dwelling-house: we may as well take away what parts of a house we may think superfluous. The law excepts policy: surely offices are as much *policy* as gardens and trees.

MONBODDO. A stable is a very special part of a mansion-house. I would rather give up the best room in my house than give up my stable.

PRESIDENT. The question is not what is equitable and convenient, but whether the Act of Parliament authorises us to give to one man part of the offices of another? Kilns and shades may be considered as adjuncts. There is nothing in the Act of Parliament which allows money to be given in compensation, and yet the present action is founded on that principle, that money may be given in compensation. Such compensation may be necessary, and the law allows it, where the question is as to straightening of marches, and a division cannot be made without an allotment to one or other of the parties.

On the 14th July 1777, "The Lords found that the offices are no proper subject of division, in terms of the Act 1695, and remitted to the Ordinary to proceed accordingly."

Act. Ilay Campbell. *Alt.* R. Cullen.

Reporter, Alva.

Diss. Justice-Clerk, Alva.

1777. *January 16.* LIEUTENANT ARCHIBALD CAMPBELL *against* DUNCAN
MACALISTER.

IRRITANCY.

Whether a suspension of a decree of removing be competent after symbolical ejection has taken place?

[*Faculty Collection, VII. p. 350; Dict. App. —; Irritancy, No. 1.*]

BRAXFIELD. If the decret of removing had been carried into execution, we