Diss. Monboddo, Covington. [Lord Covington was not satisfied as to the evidence that a thirlage existed; which, however, is a thing of the utmost notoriety.]

1780. *January* 18. MARGARET, LADY GRAY, *against* MRS ISOBEL BLAIR.

RUN-RIG.

The Statute found not to authorise exchanges to a larger extent than four acres at one place.

[*Fac. Coll. IX.* 37; *Dict.* 14,151.]

ELLIOCK. The thing proposed is for the advantage of the parties as to the small parcels; but, as to the large parcels, I think that the law will not admit of the division: it is in truth an excambion.

MONBODDO. If the legislature has made a statute for a certain purpose, and if that purpose is not thereby answered, the legislature must make a new statute; we cannot. The only thing which embarrasses me, is the *series rerum similiter judicatarum*, which gives a very wide interpretation to the statute.

HAILES. This course of decisions may be said to have been interpreted by the decision, *Buchanan* against *Clark*, which put a strict interpretation on the statute. In truth, most of the decisions are not inconsistent with the tenor of the statute. The Court gradually enlarged the interpretation. The former decision was always an authority for enlarging the next. In the case of *Bruce* of *Kinnaird*, the judges made a wider stretch: they did not mean to hurt Mr Bruce, when out of the country, but they consulted his interest when out of the country; and went farther for his benefit than perhaps they would have done had he been present. It is high time to stop; and it is better to go back into the limited interpretation of the statute than to go forwards into an interpretation which will render all property insecure.

KAIMES. We must not interpret run-rig to mean merely *single ridges*. It relates to cases where agriculture cannot be profitably carried on without division. This, however, will not extend to fields of twenty or thirty acres. I would limit the excambion to five acres.

JUSTICE-CLERK. The legislature could not have meant to allow the division of great parcels; for it does not mention the Court of Session as judges: it never meant to make over large parcels of ground from one heritor to another.

COVINGTON. Such a process of excambion would not have been sustained at common law: the action is on the statute. Run-rig means *interjected lands*, whereby agriculture is prevented from improvements; but when the parcels are large, the purpose of the statute, which is improvement in agriculture, may be attained without division.

On the 18th January 1780, "The Lords found that the Act of Parliament does not extend to large fields, belonging to different proprietors; and remitted

to the Ordinary to consider how far the division can proceed as to lesser parcels;" altering Lord Elliock's interlocutor.

Act. W. Nairne. *Alt.* Ilay Campbell.

1779. *December* 9, and 1780, *January* 18. GEORGE, LORD ELIBANK, *against* MARGARET HAY, an Infant.

REMOVING.

Whether an arrear of a year's rent, due to the landlord's executor, entitles his heir to pursue an action of removing?

[*Fac. Coll. VIII.* 193; *Dict.* 13,869.]

COVINGTON. Lord Elibank cannot avail himself of the debts due to another. The bill did not defeat the right of hypothec: the rent is still due until payment of the bill. [This relates to a part of the cause, in which there was difference of opinion.]

MONBODDO. The rent is divided by the succession dividing. This is just the same thing as if the sum had been assigned, which would not have put this case without the act of sederunt.

BRAXFIELD. In considering whether an action of removing is well founded, we must consider the state of things when the action was brought; and we must consider the state of things when the decreet is pronounced. The landlord is not bound to accept of a partial payment; but if he does accept of it, and so reduces the rent within a year's rent, he cannot have action of removing. When this action was brought, the tenant owed nothing to the landlord. It is not enough to say that the tenant owes more than he can clear. Insolvency is not the purpose: the landlord must say that the tenant owes more than a year's rent. The executor cannot bring an action of removing: he must take payment as he best can: if the heritor assigns, (the case put by Lord Monboddo,) he can no longer have the power of removing.

COVINGTON. This doctrine is *new*, and it is dangerous.

KENNET. The tenant was in arrears, and the action was properly brought. If Patrick, Lord Elibank, had been alive, there could have been no defence; and the accident of his death cannot vary the case.

ELLIOCK. The Act of Sederunt gives right to an heritor to insist in a removing, on account of rent due to himself, but not on account of debts due to another.

On the 9th December 1779, "The Lords passed the bill."

Act. A. Murray. *Alt.* Charles Hay.

Reporter, Kennet.

Diss. Covington, Stonefield, Kennet, Monboddo.