1792. *May* 15. BRUCE *against* BRUCE.

No 8. IN a division of run-rig lands, the LORDS found it was not necessary that the tenants should be made parties to the suit. It is presumed, that the landlord will take care of the interest of his tenants; and if they suffer, they have recourse against the landlord on the warrandice in their leases. See APPENDIX.

Fol. Dic. v. 4. *p.* 247.

1793. *February* 26.

Sir WILLIAM JARDINE *against* Lady DOUGLAS, FRANCIS SHARP, and Others.

No 9.
A decree of the Sheriff, giving off nine contiguous acres, supported.

THE barony of Sibbaldbie, the property of the Marquis of Annandale, is thirled to the mill of Heugh, which belongs to Sir William Jardine. Part of the barony having been inconveniently interspersed with the neighbouring estates, and particularly with those of Lockerby and Hoddam, a process of division on the act 1695, c. 23. was brought before the Sheriff, in which a final decree was pronounced in 1774; but to this process Sir William Jardine was not made a party.

By this decree, the Marquis ceded at one place nine acres. The tenants of these lands from that time discontinued, and those of the lands given in exchange, began to bring their grain to the mill, in terms of the thirlage.

In 1788, Sir William Jardine brought a declarator of thirlage, in which, *inter alia*, he *contended*, that the lands which had been given off to the estates of Lockerby and Hoddam, were not thereby liberated from the thirlage to his mill, and

Pleaded; 1*mo*, It is now a settled point, that the statute 1695, c. 23. does not authorise exchanges of land to any higher extent than four acres at one place; 17th January 1782, Lady Gray against Blairs, No 7. p. 14151. This division, therefore, can be considered only as a private excambion.

2*do*, The decree can at any rate have no effect against the pursuer, who was not a party in the action.

When a subject belongs in common to two persons, neither can make either a total or partial exchange, however advantageous for both, without consent of the other, and both must be parties in a process on the act 1695.

By a parity of reason in the case of a predial servitude, no transaction with the owner of the servient tenement can have effect against the owner of the servitude, if he is not made a party to it. In the case, 8th February 1791, Ballardie against Bisset*, if was found, that the proprietor of the servient tenement could not be obliged to go to another mill, though equally convenient.

* *Voce* THIRLAGE.