

was made lower, and how much of the water diverted is necessary for the going of the mill; and sustained Garleton's libel, as to the expense of the building of the park-dyke, relevant, notwithstanding there was no intimation made to Barns, that the pursuer was to build the said dyke, and requiring him, &c. reserving to themselves to consider, after probation of the libel, what part of the expenses Barns ought to pay, and how far Barns is benefited by the building of the said park-dyke; and repel the allegation, that the said park-dyke is not built upon the march, but on the side of the strip, which strip is the march; and ordain both parties to condescend upon the advantage that doth accrue by building the said dyke.

*Fountainhall, v. 1. p. 31.*

1702. *January 10.* SIR JOHN RAMSAY *against* SIR JAMES PRIMROSE.

SIR JOHN RAMSAY of Whitehill resolving to divide a common muir lying betwixt him and the barony of Carington, belonging to Sir James Primrose, and also to make inclosures, conform to the acts of Parliament 1669 and 1695, and craving some lands of Sir James's to make his dyke equal; he *alleged*, By my tailzie and infeftments I can alienate none of my lands, but brook them by irritant clauses, which, if I contravene, my right is null, and the next heir has access in the terms of the act of Parliament 1685 anent tailzies, which being the great fence and security of our properties, the other inferior, lesser interests of inclosures must yield thereto. *Answered*, Irritancies prohibit voluntary alienations, but not necessary and judicial ones appointed for a public good; and here you can have no prejudice, for the Lords shall adjudge as much land to you in excambion as you gave away, and it shall be fettered with the same irritant clauses as the former was; and in case money were decreed, it behoved to be tailzied or employed on land; but the clearest way in such entailed estates is by excambion of land for land, to be subjected to the same burden with the former. THE LORDS decreed and adjudged with that quality.

*Fol. Dis. v. 2. p. 86. Fountainhall, v. 2. p. 138.*

1713. *July 28.*

MR ARCHIBALD DUNBAR of Thunderton *against* SIR ROBERT GORDON of Gordonston.

AT discussing the suspension of a decret of the Justices of Peace casting about the high-way, and adjudging some pieces of Sir Robert Gordon's lands to Mr Archibald Dunbar, for making his inclosures regular, in the terms of the act 14th, Parl. 1. Ch. 2.; the LORDS found, That the said statute is a perpetual law, in so far, as to encourage inclosing, it empowers Justices of Peace to cast

No 2.

No 3.

In a process of streighting marches against an heir, whose estate was entailed, the Court decreed with this quality, that the lands got in excambion should be under the fetters; and in case money were decreed, it should be tailzied and employed on lands in the same manner.

No 4.

The act of Charles II. in so far as for encouraging inclosing is perpetual, although in other respects temporary.