On the 17th January 1777, " The Lords repelled the objection.
Act. D. Rae. *Alt.* A. Elphinstone.
Reporter, Justice-Clerk.

1777. *January* 21. ARCHIBALD DOUGLAS and THOMAS FORREST *against* JOHN INGLIS, &c.

RUNRIDGE.

What lands are Runrig.

[*Fac. Coll., VII.* 358; *Dict. App. No. I.; Run-ridge, No. 2.*]

GARDENSTON, The lands are in run-rig situation. The objection against the Act of Parliament taking place is, that the grounds were originally in separate parcels, and that the run-rig has been introduced by means of purchases made from time to time. This is no good reason. If, indeed, the law had once divided, I doubt whether a second division could be made under the statute.

COVINGTON. It is not set furth *when* the lands in question were first alienated from the family of Douglas. I suppose that they were mostly alienated prior to the statute. Supposing that there was an objection against Mr Douglas, as contravening the act of his predecessors, it will be observed that he is not the only pursuer: no objection lies against the other pursuer, Thomas Forrest. The Court has extended the statute far beyond the intention of the legislature. The case of *Tranent* was very like the present case. *There,* there was a burgh of barony, and the same objection now made was proponed and repelled.

KENNET. I had some difficulty in the case of *Tranent. There,* the superior opposed the division; yet it was an equitable judgment. The Court will not give a different judgment where the superior and some of the feuars concur in seeking division. As to the common, if the servant-men were pursuing, there would be a difficulty: the proportion of the common would fall to be set off according to the possession.

KAIMES. The objection urged by the defenders goes too far; for every man who has a share in run-rig lands must have got it from somebody. Besides, Mr Douglas does not pursue as superior, but as proprietor; and with him Forrest, a feuar, concurs.

PRESIDENT. The parcels are so small, that, if they are not run-rig, they are run-dale. But there is no proper summons for dividing the common.

AUCHINLECK. One difficulty occurs here: Suppose that a person feus out land, in order to make a little town, according to the conveniency of the feuars; after all this, he, as the superior, says, " I desire to change every thing that I have formerly planned and executed." Would he not be debarred from it by his own deed?

BRAXFIELD. I am clearly of opinion that action lies, on the statute 1695. Any difficulty in the cause is removed by Forrest being a pursuer along with Mr Douglas. Besides, Mr Douglas is a joint-proprietor: the family of Douglas was never totally denuded. If the run-rig had been owing to the act of feuing, there might have been a doubt. The anterior possession, previous to the feuing, appears to have been promiscuous and by run-rig. A division would be competent to every one of the feuars, and so also to the superior, who has retained the property of part of the lands. It is not necessary that the statute 1695 should, in its execution, be beneficial to every party: if you have not been made worse, you have no reason to complain that others are made better.

MONBODDO. I should have doubted much, were it not for the decisions of the Court. A burgh of barony is as much a corporation as a royal burgh. I am also moved with the argument of Lord Auchinleck, reporter. It does not appear that the possessions were originally run-rig or run-dale; they have become so by accident.

On the 21st January 1777, "The Lords found that the division must proceed on the Act 1695, so far as relates to run-rig lands; but that the division as to commonty cannot proceed on this libel."

Act. R. M'Queen, C. Brown. *Alt.* A. Crosbie.

Reporter, Auchinleck.

1777. *January* 25. JAMES AFFLECK *against* DAVID WILLIAMSON.

WRIT—MANDATE.

How far an Overseer, subscribing a Note for the Company who employ him, without mentioning by Procuration, is personally liable for such Subscription?

[*Fac. Coll. VII.* 99; *Dict. App. I. Writ, No. I.*]

AUCHINLECK. Williamson does not bind himself, but only Sheriff and Company. If Sheriff and Company acknowledge themselves bound, Williamson is no farther concerned.

BRAXFIELD and ELLIOCK said, That it consisted with their knowledge that such notes were frequent in Lanarkshire and Dumfries-shire, and that they passed currently from hand to hand; but that the person signing them was never understood to be personally bound in payment.

COVINGTON. I supposed that the signer of such notes was wont to pay them when they became due.

PRESIDENT. *That* is altogether accidental, and it depends on the fact of the signer continuing clerk, if he pays it as clerk, not as signer of the notes.