

PLANTING AND INCLOSING.

1669. July 21. EARL OF CRAWFORD *against* RIG.

THE Earl of Crawford pursues Rig for payment of the half the expense of the building a park-dyke belonging to the Earl, in so far as it is built, or to be built upon the march betwixt him and Rig, and that upon the act of Parliament 1661, anent the parking and inclosing of ground, whereby for the encouragement of them that inclose it, it is provided that whatever part of the park or inclosure falls upon the march, that part shall be built upon the equal charges of both the heritors. The defender *alleged* absolvitor, because the march betwixt the Earl of Crawford and him is not a dry march, but a burn; and the act cannot be understood but of dry marches; otherwise though there were a water intersected, the heritor building a park dyke upon his own side of the water, might require his neighbour on the other side of the water to pay the half of his charges; *2dly*, Some parts of the marches betwixt the pursuer and defender are mossy and boggy ground, upon which no dyke can stand. The pursuer *answered*, That he opposed the act of Parliament, and that any meith betwixt his land and the defenders is an inconsiderable strip of water, which oft times is dry, and cannot hinder a stone dyke to be built in the very channel of it; and for the other, if the pursuer built not the dyke, the defender will not be liable.

THE LORDS found the reply relevant, and ordained the strip of water either to be wholly without the dyke, or, if the defender pleased, that it run a space within the dyke, and a space without the dyke, that either party might have the benefit of watering thereat.

Fol. Dic. v. 2 p. 86. Stair, v. 1. p. 642.

No 1.

Although two properties were divided by a stream, it was found that there might be a dyke at mutual expense; and that the dyke might be so far on the one side, so far on the other of the stream.