No 12.

Such being the two objections, founded on the letter of the statutes, and particularly of the act 1695, Judges cannot, in statutes which limit the common use of property, go beyond the letter of the statute, however great the obstinacy of the one party, or the conveniency of the other may be.

Answered; That supposing the case in question not to lie within the words of any of the statutes referred to, yet it lies within the spirit of them, and particularly of the 23d act 1695; and it is the duty of Judges to extend a law intended for the beauty and improvement of the country, against those who would disappoint that beauty and that improvement.

THE LORDS repelled the reasons of suspension, and found the letters orderly proceeded.

Act. *Lockhart J. Dalrymple.* Alt. *Ferguson, Miller, Johnston.*

J. D. *Fol. Dic. v.* 4. *p.* 80. *Fac. Col. No* 213. *p.* 309.

1758. *January* 20.

ALEXANDER LOCKHART of Craig-House *against* JOHN SEIVEWRIGHT of South-House.

No 13.
Conterminous heritors are bound to repair and uphold march dykes formerly built.

IN March 1745, Alexander Lockhart purchased the lands of Craig-house from John Seivewright's father. The boundary on the east, between the lands of Craig-house and the lands of Plewlands, the property of Seivewright, is described in the disposition to be a stone dyke, 'which stone dyke, upon the east side, is hereby declared to be, now, and in all time coming, the boundary 'between the said lands of Plewlands and the lands of Craig-house.'

In the year 1757, this stone dyke had become decayed; and Mr Lockhart, with a view to inclose that part of his estate, brought an action against Seivewright, to oblige him to contribute half the expense of repairing or rebuilding it, or of making such other sufficient fence as should be found to be proper.

Pleaded in defence, The dyke in question was not built by two conterminous heritors, in terms of the act 41st parl. 1661, but by the heritor of Craig-house, for the advantage of that estate, when he was proprietor also of Plewlands; and the clause in the disposition, declaring this dyke the boundary, must be understood to transfer the property of it to the purchaser of Craig-house: That the defender will have no benefit from this dyke, because his estate of Plewlands is uninclosed, and is let out to tenants upon leases for a great number of years. The act of parliament 1661, makes no provision for upholding or repairing march-dykes after they are built; and though, at common law, those who have concurred in building, may be obliged to uphold; yet this will not apply to the case, where one heritor has been at the sole expense of building, without following the rules of the act 1661; the intention of which

statute was only to encourage the inclosing lands, but not to provide for preserving inclosures already made. No 13.

Answered, It is of no consequence, whether this dyke was built by Seivewright, when proprietor of both estates, or at a time when the estates belonged to different proprietors; since by the disposition to Mr Lockhart, it is declared to be the march-dyke; and, of consequence, is the common property of the pursuer and defender. The act 1661 makes no distinction, whether the heritor who is required to concur in building a march-dyke, will or will not reap any advantage from it, by completing an inclosure upon his own estate; and after the dyke is erected, it must follow, at common law, independent of the act 1661, that each heritor shall contribute equally to uphold and repair their common property.

'THE LORDS found the defender liable to contribute one half of the expense 'of upholding the march-dyke between the pursuer's property and his.'

Act. *Garden*. Alt. *Scrymgeour*.

W. J. *Fol. Dic. v. 4. p. 80. Fac. Col. No 91. p. 163.*

1769. *December* 5. RIDDEL *against* The MARQUIS of TWEEDDALE.

No 14.
The clause of the act 1661, c. 41. respecting half-dyke, is perpetual.

JAMES RIDDEL having purchased the lands of Dodhouse and Dodhouse-rig, consisting of about 1300 acres, and bounding with the estate of Tweeddale for the space of 648 roods, insisted that the Marquis should lay out one half of the expense of making an inclosure along the common boundary, in terms of the statute 1661. c. 41.

Pleaded in defence, 1*mo*, The statute was temporary, and the period for which it was to remain in force is long expired. The former enactments inforced with penalties, against heritors who should not inclose certain portions of their grounds, having proved ineffectual, the legislature was willing to try the effect of temporary benefits or privileges. In this view, the act 1661. c. 41. provides, that heritors possessed of L. 1000 Scots of rent, shall inclose 4 acres yearly, and plant them with trees, and that other heritors shall 'plant, inclose, 'and ditch yearly, more or fewer acres, according to their respective rents, 'for the space of 10 years next ensuing.' In order to encourage heritors to the observation of the statute, it declares, 'such parts and portions of their 'ground as shall be so inclosed and planted, to be free of all manner of land-'stents, taxations, or impositions of whatsoever nature, or quarterings of horse, 'for the space of 19 years next after the date hereof.'

These clauses are clearly temporary; and the clause respecting half-dyke being intended to inforce them, must of course be temporary likewise. Indeed that that matter is put out of all doubt by the statute 1685, c. 39. which, upon