

1799. July 3. JOHN LOCH *against* ALEXANDER TWEEDIE.

THE property of John Loch is separated from an extensive sheep-farm, possessed by Alexander Tweedie, by a march-fence, erected at mutual expense. Mr Tweedie kept two shepherds; but when they were employed in sheepshearing at some distance, a number of his sheep got over the fence into Mr Loch's ground, where they were pointed by him. And he afterwards raised an action before the Sheriff, for the penalty of one half merk Scots for each sheep, in terms of the act 1686, c. 11. besides actual damages and expenses.

Mr Tweedie brought a counter action on account of alleged maltreatment of the sheep while they were pointed.

The Sheriff, on advising a proof, found Mr Loch entitled to penalties, amounting to L. 5 : 1 : 1 4-12ths Sterling, modified the damage to his grass to 1d., and assoilzied him from the counter action.

In an advocacy by Mr Tweedie, the points at issue came to be, How far the claim on the statute was not precluded?

*1mo*, By the trespass having been committed across a march-fence, and by the defender's keeping shepherds?

*2do*, By certain specialties in the case?

On the general point, the argument of the parties was not materially different from that in the reported case, 18th Feb. 1794, Govan against Lang, *supra*.

THE LORD ORDINARY found, that the "act of Parliament libelled on applies to trespasses of the nature mentioned in the libel, and that the action is properly laid on said act;" and confirmed the judgment of the Sheriff as to the amount of penalties and damages due to Mr Loch, and assoilzieing him from the counter action.

The Court were somewhat divided in opinion as to the application of the statute, but more on the specialties of the case.

THE LORDS at first (28th November 1798) adhered to the interlocutor of the Lord Ordinary, and found expenses due to Mr Loch.

They afterwards, (29th January 1799) 'in the particular circumstances of this case,' assoilzied both parties.

But on 3d July 1799, they returned to the first interlocutor. And a reclaiming petition was (19th November 1799) refused without answers.

Lord Ordinary, *Craig*.

Alt. *H. Erskine, D. Cathcart*.

For Loch, *Lord Advocate Dundas, Moodie*.

Clerk, *Home*.

D. D.

*Fac. Col. No 137. p. 3102.*

Division of Runridge; see RUNRIDGE.

See APPENDIX.

No 21.

The penalties of the act 1686, c. 11. are exigible, where the trespass is committed over a march-fence.