posed of by the trustees before his death; and found, that the annualrents due at Candlemas, preceding Sir James's death, do belong to his executors. No 4.

C. Home, No 131. p. 220.

*** See the report of this case by Kilkerran, Sect. 28. *h. t.*

1741. *June* 4. THOMAS PRINGLE of Symington *against* ALISON PRINGLE.

No 5.
The proprietor of a grass farm let in tack, having out-lived Martinmas, his executor and not his heir was found entitled to the whole year's rent, payable at Martinmas preceding, and Whitsunday subsequent to his decease.

ROBERT PRINGLE of Symington deceased, set two tacks of two grass-rooms belonging to him, for a term of years, and, by the tacks, the tenant's entry to be at Whitsunday 1736, and the first years tack-duty is declared payable at Martinmas 1736, and Whitsunday 1737, by equal portions, and so forth yearly thereafter, and Robert Pringle died in April 1738; whereupon this question ensued, Whether the rents for crop 1737, payable at Martinmas 1737, and Whitsunday 1738, belonged wholly to Alison Pringle the executrix, or if the half belonged to Thomas Pringle the heir?

For the heir it was *pleaded*, That the possessions of the tenants being grass-rooms, the legal terms, as well as the conventional, were Martinmas and Whitsunday; and that the defunct, having died before Whitsunday, though after the term of Martinmas, the rent payable for these possessions from Whitsunday 1737 to Whitsunday 1738, fell to be divided between his heir and executor; and that the heir had right to the rent due at Whitsunday 1738. In support thereof, it was *observed*, That the law and practice of Scotland had established certain legal terms, which are always made the rule for determining questions of this kind betwixt fiars and liferenters, and heirs and executors, and that without regard to the conventional terms; and therefore, the heir grounds his claim, not upon the Martinmas and Whitsunday being the conventional terms, but upon their being, as he conceives, the legal ones. In corn rooms, the term of Whitsunday is always considered as the first, and Martinmas as the last legal term; so that the surviving one, or both of these, gives right to the whole, or half the rent of that crop. In establishing these legal terms, the law has had regard both to the time of the tenant's entry, which, in such, is generally known to be at Martinmas, and can never be sooner to the corn-grounds than the separation of the former crop, and therefore has made the first term at a half year's distance from the entry, and to the second at a full year's distance; and likewise to this, that by Whitsunday, the lands are fully sown, and at Martinmas fully reaped, and all that year's profit fully got. From the above rule, it is consequential, that the entry, as to grass-rooms, is always at Whitsunday; and therefore, the next term of Martinmas falls to be considered as the first legal term of that year, and the Whitsunday following as the last, which is most agreeable to reason; because otherwise, that is, if Whitsunday was to be considered as the first legal term, it would suppose a half year's rent to be, by law, due by the tenant, at, or even before his actual entry, which, for the most

No 5. part, is not till after the term. In short, in corn-rooms, the full profits of the crop are got by Martinmas; whereas, in grass-rooms, a continual benefit arises to the tenant from Whitsunday to Whitsunday; in corn-rooms, the possession of the old tenant is determined, and that of the new one commences at Martinmas; whereas, in grass-rooms, the contrary holds; and therefore, not only is the difference between these rooms manifest, but likewise it is evident, that, by the same rules by which Whitsunday and Martinmas are made the legal terms in corn-rooms, Martinmas and Whitsunday ought to be these, with respect to grass ones. What further aids the heir's plea, is, That in house-mails (to which the case of grass-rooms has a much nearer resemblance than to corn-lands) the terms of Whitsunday and Martinmas have never been considered as the legal ones; but the legal term for the first half year's rent is understood to be the Martinmas after the tenant's entry to the house, and the second term is the Whitsunday thereafter; the reason of which is obvious, viz. That there, as in the present case, the rent is understood to be payable for the possession from Whitsunday to Whitsunday: And therefore, the surviving the term of entry, is never understood to give right either to the whole or half-year's rent; but the legal term of each half-year's rent is understood to be that which is immediately subsequent to that half-year's possession; for till then no rent can be said to be due; and the case is the same in grass-rooms, the rent is paid for a continued possession from Whitsunday to Whitsunday; and there is no reason to suppose *diem cedere* of any half-year's rent, until that half-year's possession is expired.

For the executrix it was *pleaded*, That the division of rents betwixt an heir and executor, &c. depends upon positive law, and is not to be determined by any rule of natural equity; and therefore it is, that, almost in every country, the rule varies; and it cannot be said, that the one rule is more equitable or just than the other; if the rule is once fixed, the greatest equity lies in observing it; because, it is presumed that parties know it, and make their settlements upon the supposition of the rule of law; so that, in such a question, it is in vain to resort to the principles of law, or the reasons assigned by the doctors; they can give no aid in a question of fact, viz. What is the rule established by the law of Scotland? It is true, there is no statute settling this matter, but, by custom, it is firmly established, that with respect to all lands, there are two legal terms, Whitsunday and Martinmas: That if the heritor or liferenter survive the first, their executor hath right to the half of that year's rent; and if they survive Martinmas, to the whole; that it makes no difference what be the conventional terms of payment, and that the rule is general, without distinction, betwixt grass-rooms, corn-rooms, or mills, as appears from Sir George Mackenzie, lib. 2. tit. 9. § ult. Stair, B. 3. T. 8. § 57. 21st Feb. 1635, Laird of West-Nisbet, *voce* TERM LEGAL and CONVENTIONAL; 25th July 1671, Guthrie, IBIDEM; and February 1727, Sir William Johnston against the Marquis of Annandale, IBIDEM.

No 5.

But supposing the door were still open for an enquiry into the reason of fixing the legal terms in corn-rooms, it could not be admitted that the reason is that assigned by the heir; for it is known, that, in corn-rooms, the tenant enters to the houses and yards at Whitsunday, before he begins to labour, and removes again at Whitsunday before his crop is ripe; and yet, after he is a year in possession, only half a year's rent is due by him to the heritor, who, dying after Whitsunday, transmits but half a year's rent to his executor.

It is true, the Roman law made but one legal term in a corn-room, namely, when the fruits were fully reaped; but ours has proceeded on different maxims; 1*st*, It has divided the rents of the year into two terms; and 2*dly*, It has considered the year and the crop as the same thing; and therefore, in whatever year the crop is reaped, the two terms of Whitsunday and Martinmas of that year are the legal terms, without respect to the tenant's entry or convenal terms: And therefore, as in corn-rooms, the tenant entering at Whitsunday reaps no crop till Martinmas in the year following, therefore, the Whitsunday and Martinmas of the following year are the legal terms; and in the same manner, in grass-rooms, the tenant entering at Whitsunday, reaps his crop of grass between and Martinmas the same year; and therefore Whitsunday and Martinmas in the year of his entry are the legal terms.

And as to the argument from house-mails, as they yield profits *quotidie*, by the Roman law they were due from day to day; but, in our law, as there are two legal terms, so, as there is no crop, the tenant entering at Whitsunday, the first legal term is Martinmas, and the second Whitsunday thereafter: Such is our custom, and therefore, it ought to be followed in house rents, upon the same principle that Whitsunday and Martinmas are the legal terms in land-rents.

THE LORDS found, that the defunct having outlived Martinmas 1737, his executors were entitled to that whole year's rent; and therefore, that Alison Pringle has right as executrix confirmed to her father, to the half-year's rent that was payable at Whitsunday 1738. *See* TERM LEGAL and CONVENTIONAL.

Fol. Dic. v. 3. *p.* 266. *C. Home, No* 165. *p.* 277.

1744. DAME SIDNEY SINCLAIR *against* SIR WILLIAM DALRYMPLE.

No 6.

THE rule for determining the several interests of heir and executor, is very different in lands possessed by tenants, and in such as were in the natural possession of the heritor at his death. In those the executor has the one half of the year's rent, where the heritor survives Whitsunday; but in these, whether the heritor survive Whitsunday or not, the executor has right to nothing, but to the crop, so far as the same was sown before the heritor's death, and the heir has right to whatever may be sown after that period by the executor, upon repaying the expense of seed and labour; and as for the grass and growing hay, the