

1744. _____.

DAME SIDNEY SINCLAIR *against* SIR WILLIAM DALRYMPLE.

No. 47.

Rule for determining the several interests of heir and executor.

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 afterwards by the executor, upon re-paying the expense of seed and labour; and as for the grass and growing hay, the right of the heir commences from the moment of his predecessor's death.

And in these terms judgment was in this case given. *Vide* Craig, Lib. 2. Dieg. 9. § 13.

Kilkerran, No. 4. p. 565.

1745. June 11.

CAMPBELLS *against* CAMPBELL.

No. 48.

The tenant who entered at Whitsunday, being liable for a year's rent at the Martinmas thereafter, and the heritor dying between Whitsunday and Martinmas, Who entitled to the rent?

Archibald Campbell of Shirvan settled his estate on Dougal, his only lawful son, whom failing, on Alexander his natural son, &c. Archibald, the father, having died in June, 1737, and Dougal, his son, in the August thereafter, Margaret and Liliass, his sisters, daughters of Archibald, brought a process against Alexander, now of Shirvan, to account to them for the half of the crop 1737, with the whole of which he was alleged to have intromitted, seeing the rents of the lands being, by the tacks, all payable at one term, viz. Martinmas yearly, he had uplifted the whole year's rent payable at Martinmas 1737.

In point of fact, the intromission was acknowledged, as it also was in point of law, that the pursuers had right to the half of the crop 1737, so far as the same was due at their predecessor's death. But the point controverted was, whether in this case, where the tenant's entry was at Whitsunday, and the whole year's rent payable at the first term of Martinmas thereafter, the year's rent payable at Martinmas 1737 was for crop 1737, or, if it was not rather the year's rent for crop 1738, and if the year's rent for crop 1737 was not that which was payable at Martinmas 1736? and if that was the case, then as Archibald and Dougal had in their life intromitted with the whole year's rent payable at Martinmas 1736, the rent of crop 1737 was already uplifted by the predecessor, and could not be again claimed by his executors?

Upon this question the Court was much divided. All agreed in the rules, that Whitsunday and Martinmas are the legal terms of the year; that the legal, and not the conventional terms are considered; and that therefore, where the predecessor survives Whitsunday, the executor has right to the half, and where he