HEIR AND EXECUTOR.

No. 1. 1741, June 4. THOMAS PRINGLE *against* EXECUTORS of PRINGLE.

A TENANT entering into a grass-room at Whitsunday and the rent payable half yearly, the first payment being the first Martinmas after his entry, and the heritor dying after Martinmas,—the Lords found, that he having survived both the legal terms, his executors have right to the rent not only payable at Martinmas but also at the following Whitsunday after the heritors death,—much against the inclination of several of us, who were for the interlocutor. But we thought ourselves tied down by former precedents, 21st February 1635, L. Westnisbet, observed by Durie and also by Spottiswood, *verbo* EXECUTRY *in fine*, (DICT. No. 15. p. 15,883) and 20th July 1671, Guthrie, (DICT. No 25. p. 15,890.)

No. 2. 1744, Dec. 7. SIR W. DALRYMPLE *against* LADY DALRYMPLE.

SIR JOHN DALRYMPLE died 24th May 1743. He had a field of clover on the ground whereof that was the first year or crop, having been sown with the barley the preceding year 1742. There was also a field that had been sown with rape-seed but did not prosper, and the day he died a number of ploughs were yoked and ploughed the whole ground, and it was sown with barley. The competition was betwixt his relict, executrix, and his heir Sir William, for the crop of clover of the year 1743 and for the barley crop. There was also a competition anent other grass grounds, in respect Sir John survived Whitsunday; but as to this none of us made any difficulty that it belonged to the heir. We all agreed likewise as to the barley sown after his death,—but Arniston doubted. As to the clover we also adhered,—but Arniston differed,—and the case was mentioned of wheat sown at Lammas and the heritor's dying at or before Martinmas. The President thought the heir would have the crop, from which I own I differed, but I did not hear Arniston.

No. 3. 1745, June 11. CAMPBELL *against* CAMPBELL of Skirven.

LANDS being let to different tenants, whereof some paid fore-hand rent, that is the entry was at Whitsunday, and therefore the removal also at Whitsunday, but the whole rent payable at the Martinmas after the entry, though only half a year's possession was then past; others were after-hand rent, that is, the rent was payable Martinmas come a year after the entry, that is, at the Martinmas after rouping the crop, and what victual was due was payable betwixt Yule and Candlemas after separation of the crop,—and parties differed whether it was grass-rooms or corn-rooms. Arniston was for distinguishing betwixt corn and grass-rooms. Tinwald thought that the heritor dying after the Martinmas, his executor had right only to the half of the fore-hand rent payable at the term, and I inclined a little to the same opinion; but there were so many precedents to the contrary, that I thought we could not now alter them, and for the same reason I thought we could not distinguish between corn and grass-rooms; and likewise because I thought

it would make such questions altogether arbitrary, and occasion many disputes whether the rooms were corn or grass-rooms, or whether most of the one or the other; and accordingly we found in this case that Archibald Campbell of Skirren having survived Martinmas 1736 his executors have right to the whole rents payable at that Martinmas whether fore-hand rent or not, and the victual rent payable at Yule and Candlemas thereafter; and that his son Dougal having survived Whitsunday 1737 (though not infeft) his executors have right to the half of the rents payable at the Martinmas thereafter, and of the victual rent payable betwixt Yule and Candlemas thereafter, agreeably to the decision 4th June 1741, Pringle, (*supra*) and several others there mentioned, and also in the papers.—(21st Feb. 1745.)

The interlocutor pronounced 21st February was very incongruously expressed, and there came a bill from the defender praying an explanation, which with answers brought on the case to be argued at great length on Saturday,—and this day, (11th June,) Tinwald was keen against the interlocutor. Arniston was for it, but only on the supposition that it was a grass-room and not properly fore-hand rent. But the Bar offered to prove the contrary, and that the rent payable at Martinmas was for the crop then yet to be sown; but the pursuers supposed that these farms were originally grass-rooms which occasioned the payment of rents in that manner, and continued notwithstanding the change from being a grass-room to a corn-room. Arniston thought on that supposition that it ought not to be considered as fore-hand rent, but as if it were still a grass rent; but yet he still argued and gave his opinion against the executors on the supposition of its being a corn-room. The question put was, whether a proof before answer of its being a corn-room or not? and if it carried, not, then we were to pronounce the interlocutor marked 21st February,—and it carried to allow a proof.

HEIR-APPARENT.

No. 1. 1734, Dec. 10. LADY RATTAR *against* SINCLAIR of Rattar.

THE Lords sustained process on a summons upon the passive title of charge to enter though the summons was raised and executed within the year. This came first before me and then the process had been called seen and returned *intra annum*, and therefore I found no process. But thereafter the pursuer altered the day of compearance, and the process coming before Lord Leven, he reported it, and the above judgment was given.

No. 2. 1736, July 13. MURRAY of Conheath *against* NIELSON of Chapple.

THE Lords found it competent to John the Protestant heir to prove the apprising satisfied and paid.