

1782. July 16. Mrs MARY DRUMMOND *against* Mrs AGATHA DRUMMOND.

CLAUSE.

[*Faculty Collection, IX. 847; Dictionary, 2813.*]

BRAXFIELD. If the year's rent was in the person of the heir, it would go to his heirs; but I rest on the trust-right: the rents fell under the trust-right, and there was nothing in the *hæreditas jacens* of James Drummond (the heir.) It is said that the trust-right was revoked by George Drummond's marriage-contract: but there is nothing in that; the trust-right was not revoked. On the contrary, it was for the benefit of all the heirs of entail: that benefit could not accresce to the remoter heirs without accrescing to the nearer.

On the 16th July 1782, "The Lords found that the rents, which fell due after the death of George Drummond, came under the trust-right."

Act. A. Wight. *Alt.* Ilay Campbell.
Reporter, Stonefield.

N. B.—The other questions in this cause too much involved in circumstances to merit any recital of opinions delivered.

1782. July 18. Mrs AGATHA DRUMMOND *against* JAMES SWANSTON.

COMMONTY.

Found, that a landlord was not entitled to claim from his tenant a share of the expense of a division of Commonty proportioned to the tenant's interest.

[*Fac. Coll. IX. 86; Dict. 2487.*]

MONBODDO. *Non deficit jus sed probatio.* If the tenant had profited by the division, he ought to be liable.

ALVA. The circumstance of the alteration of possession, by the muir being divided, does not vary the case. The bargain still subsists in its original state.

GARDENSTON. If the legislature had meant to subject tenants, it would have said so.