

No 16.

The LORD ORDINARY found 'the Duke of Gordon entitled to retention out of the sum in his hands, as craved.'

A reclaiming petition was given in, which was followed with answers.

The COURT, considering the crop of 1788 as belonging to the executors, were of opinion, that they were liable for the rent of that year.

But as to the rents of the subsequent years, a great majority were of opinion, that the heir alone, after being acknowledged by the landlord as tenant, could be sued for these rents.

THE LORDS 'found the Duke of Gordon entitled only to retention of his rent for crop 1788.'

Ordinary, *Lord Dreghorn.* Act. *Tait.* Alt. *Dickson.* Clerk, *Gordon.*
C. *Fac. Col. No 176. p. 359.*

1796. February 10.

MRS ANNABELLA WIGHT, and Others, *against* WILLIAM INGLIS, and Others.

No 17.

Hay produced from seed sown along with barley and wheat in spring 1794, and cut down in summer 1795, was found, in a competition between the heir and executor of the proprietor, who died in December 1794, to belong to the heir.

IN spring 1794, William Simpson sowed clover and rye-grass along with wheat and barley, on about 70 acres of land belonging to him. He died in December following, and Mrs Wright and others, his executors, afterwards brought an action against William Inglis, and his other heirs, concluding that the hay-crop in summer 1795, produced from the seeds sown in 1794, should be found to belong to them as an artificial fruit.

The arguments used by the parties were, in substance, the same with those to be found in the case of Dame Sydney Sinclair against Dalrymple, No 6. p. 5421.

The Lord Ordinary reported the cause.

Observed on the Bench; The hay in question is to be considered as a second crop, and as such belongs to the heir. It is true, the first crop would, in this case, be of little, or perhaps no value; but that arose entirely from wheat or barley having been sown along with the grass seeds; and as the crops arising from the former were reaped by Mr Simpson, the executors are by that means fully indemnified for the deficiency or loss of the first crop of grass.

THE LORDS unanimously assoilzied the defenders.

Lord Ordinary *Eskgrove.* Act. *Cullen.* Alt. *Davidson.* Clerk, *Pringle.*
Fac. Col. No 201. p. 482.