

No. 60.

An heir under an entail which contains no limitation as to leases, may grant them, at the last permanent rent, and take grassums.

1798. *January 16.*SIR WILLIAM ELIOTT *against* GEORGE and THOMAS CURRIE.

Sir Francis Elliott held the estate of Stobs under a strict entail, but which contained no limitation as to granting leases.

In 1786, he granted George and Thomas Currie a lease for nineteen years, by which, besides the rent paid annually, a grassum of £.400 was stipulated. Part of the farm had been ten years in Sir Francis' natural possession, at least, during that time, particular inclosures of it only had been let for occasional crops.

Upon Sir Francis' death, in 1791, Sir William Elliott, the succeeding heir of entail, brought a reduction of the lease, as being granted for a diminished rent, and therefore struck at by the entail.

A proof was led; and, after hearing parties, the Court ordered memorials, in which the points at issue were, *1mo*, Whether the lease under reduction was granted for a diminished rent? *2do*, Whether a diminution of rent affords a relevant ground of reduction?

On the first point, it appeared, that the rent paid annually by the defenders was not less than that formerly received for the whole lands on a permanent lease; and the defenders contended, that the value of the part which had been in Sir Francis' possession was to be taken at this rent, and not at that drawn occasionally for particular fields, which might be much higher than a tenant could afford for a permanent lease. The pursuer, on the other hand, maintained, that this was not the proper way of estimating the value of lands which had been long in the natural possession of the landlord, and improved by him at a considerable expense.

The Court were clear, that this defence was well founded; and therefore there was no occasion to determine the second point.

The Lords "found the lease under reduction had not been let with a diminution of the rental, and therefore sustained the defences."

A reclaiming petition was (6th February 1798) refused without answers.

Lord Ordinary, *Armadales.*Act. Solicitor-General *Blair, Tait, Hope.*Alt. *H. Erskine, D. Cathcart*Clerk, *Home.**D. D.**Fac. Coll. No. 53. p. 120.*

\* \* In a process brought by Sir Francis against the heirs of entail, in terms of the 10. Geo. III. C. 5. Sir Francis had been found entitled to make £.503. being three-fourths of the sums laid out by him in improving the farm, a burden on the succeeding heirs; but parties were not agreed as to the proportion of this sum expended on the farm, while in his natural possession. The defenders contended, that this expenditure had had its effect in raising the former rent, which, however, was denied by the pursuer.