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 It is said that the trust-right was revoked by George Drummond's marriage-contract: but there is nothing in that; the trust-right was not revoked.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.

PRESIDENT. The statute does not mean, under the phrase, *parties concerned*, to comprehend tenants.

On the 18th July 1782, " The Lords assoilyied the defender;" adhering to the interlocutor of Lord Braxfield.

Act. Ilay Campbell. *Alt.* H. Erskine.

1782. *July* 27. DAVID CRAWFORD *against* ELIZABETH KINCAID and DAVID CRAWFORD.

DEATHBED.

How the sixty days are to be reckoned—What constitutes Deathbed?

This was a reduction *ex capite lecti* of the settlement of the pursuer's brother. It appeared that the deed was executed on the 8th of November at eight o'clock in the evening. He had no formed disease, but had long been addicted to drinking to excess, which had totally ruined his health. The reduction was opposed by the defender, *first*, On the ground that the testator had lived long enough to exclude the law of death-bed; *secondly*, That the pursuer had not proved that the deceased had contracted any distemper before the deed was executed.

The deed was understood to have been executed on the 8th November, at eight o'clock in the evening, and the testator died on the 6th of January following, at two o'clock in the morning.

The following opinions were delivered:—

KAIMES. The law of deathbed was formerly the law of other countries as well as of Scotland. It was so in England until the reign of Henry VIII. It is a salutary one, but I do not see any proof of a formed disease.

HAILES. The Act 1696, cap. 32, has an expression precisely similar to that in the Act under our consideration. The ten days in cap. 32, have been interpreted, by a decision in Fountainhall, to be ten days complete; and *that*, in the most favourable case for a liberal interpretation, words a case of liberty.

BRAXFIELD. As to the first point, I highly value the law of deathbed. It is not a law introduced merely for the benefit of the heir, it is also for the benefit of the testator. Besides, the Act 1696 is a correctory law, and is not to be extended beyond its precise words. A man cannot be said to live for the whole space of 60 days, who only lives 58 and a few hours more. Had the testator lived another day, the question of *dies inceptus* might have occurred. As to the *second* point, there is no occasion to give a name to the disease. A man may grow weaker and weaker, and die without any formed disease at all, and yet his settlements may be reduced *ex capite lecti*. Here the testator was long ill: he