

victual has formerly been paid, which being rentalled, the farm comes in a course of time to be set as for a money-rent. *2do*, Wherever any victual, however little, is paid, that determines the farm to be a corn-room, as no victual is ever paid for a grass-room.

No. 48.

To the *3d* it was replied, That where there is a standing infestment in liferent, it is not in the power of the fiar to foremail a corn-room to the disappointment of the liferenter at her entry, or of her executors after her death ; and should the fiar, in his own time, uplift the term's rent, to which the liferenter would have been entitled had it remained in the tenant's hand, the tenant would in strict law be obliged to pay it over again. And as to the case of heirs of entail, that it was a consideration of no consequence ; though even in that case, in strict law, the tenant in tail cannot foremail a corn-room to the disappointment of the next heir of entail.

The Lords, before answer, " Allowed a proof, whether the rooms of the estate were corn-rooms or grass-rooms ; and if corn-rooms, whether they were foremailed or aftermailed."

Kilkerran, No. 5. p. 566.

1747. January 14. EARL OF DUNDONALD *against* ALEXANDER.

The different effect of obligations to be performed at a day certain, and of obligations to be performed *sine die*, as to damage for not performance, are agitated in this case, No. 238. p. 12415. *voce* PROOF.

No. 49.
Effect of obligations *sine die* with regard to damage.

Kilkerran, No. 6. p. 569.

1748. November 9.

COCKBURN *against* The EXECUTORS and TRUSTEES of HELEN BROWN.

Helen Brown, liferentrix of the estate of Blackburn, died in July 1741 ; and so far as the liferented lands were in tenantry, there was no dispute between the creditors and her executors, who were admitted to have right to the one half of the crop 1741, and farther they did not claim. But the liferentrix having been in the natural possession of the Mains of Blackburn, a question arose between Thomas Cockburn, as factor for the creditors of the proprietor, and the executors of the liferentrix ; the factor insisting, that the executor, who, he admitted, had right to the whole sown crop, should be liable to pay the one half of the rent of the year 1741 ; and the executors, on the other hand, alleging, that where a liferentrix survives Whitsunday, her executors have right to the crop growing on the lands whereof she was in the natural possession, without being liable in any rent to the heir.

No. 50.
Executors of a liferenter, if liable for the rent of the lands in her natural possession ?