Mar. 17, 1817.

MISREPRESENTATION.—INSURANCE.

he could not have recovered from the underwriter, I propose to your Lordships to affirm the judgment.

Judgment AFFIRMED.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

SHEPPARD—*Appellant.*
WATHERSTON and others—*Respondents.*

March 7, 24, 1817.

GRASS FARM.—RENT, &c.

CONTRACT for purchase of lands, 100 acres arable, 700 acres pasture; the purchaser's entry to commence at Whitsunday, 1807, and that he is to have right "to *the* "*crop and year* 1807," and disposition, assigning "*the* "*rent for crop and year* 1807." The farm at the time of the sale in possession of a tenant at a rent payable one half at Candlemas, the other half at Lammas, in each year. Held that the seller, not the purchaser, was entitled to the rent payable by the tenant at these two terms in 1807. N. B. The purchaser obtained possession of the grass and houses at Whitsunday, 1807, and of the arable land after the separation of the crop from the ground in that year.

ON the 31st Dec. 1806, the Appellant purchased the lands of Kirktonhill from the Respondent, Elizabeth Watherston and her husband for 7000*l.* of which 2000*l.* was to be paid at Whitsunday, 1807, and 5000*l.* in five years thereafter, but bearing interest from Whitsunday, 1807. In the con-

tract of sale it was declared " that the said Robert March 7, 24, 1817.
" Sheppard's entry to the said lands is to commence
" at Whitsunday, 1807, and that he is to have right
" to the *crop and year* 1807, and in all time there-
" after."

GRASS FARM.—RENT, &c. Contract.

At the date of the agreement the lands, consisting of 700 acres pasture, and 100 acres arable, were in possession of a tenant, the Respondent, John Harvey, under a lease from Elizabeth Watherston and her husband, for nineteen years, commencing at the term of Whitsunday, 1803, as to the houses, yards, and grass, and at the period of the separation of the crop of 1803 from the ground as to the arable lands, at the yearly rent of 238*l.* payable one half at the term of Candlemas (2d Feb.), the other half at Lammas (2d August), 1804, for the first year's crop, " *or in full of the first* " *year's rent*, and so forth, yearly and termly " thereafter during the currency of this tack." The Appellant, on the 15th Jan. 1807, purchased the lease from the tenant, who renounced the benefit of it " for all the years thereof to run from and after " the term of Whitsunday first, in so far as respects " the houses, yards, and grass, and after the en- " suing crop is separated from the ground in so far " as respects the arable lands, and he binds himself, " &c. to leave the premises then patent to the said " R. S. &c."

Lease.

Appellant purchases lease.

On the 15th May, 1807, the Appellant obtained a regular disposition of the lands, containing an assignment " of the rents, mails, and duties of the " said lands due and payable for and forth thereof, " *for crop and year* 1807."

Disposition.

March 7, 24, 1817.

GRASS FARM. —RENT, &c.

Possession of grass at Whitsunday, 1807.

Action, 1809.

The Appellant obtained possession of the houses and grass at Whitsunday, 1807, and of the arable land after the separation of the crop from the ground. Harvey paid the rent due from him at Candlemas and Lammas, 1807, to Elizabeth Watherston and her husband. The Appellant insisted that he was entitled to it as the rent for the crop and year 1807; and in 1809 brought his action against Elizabeth Watherston and her husband, and against Harvey, for that rent, offering a deduction for the pasture lands, of which he received possession at Whitsunday, 1807.

The defence for Harvey was that he had been only four years in possession, and had paid four years' rent: and the defences for the other parties were that the Appellant had entered into possession of the farm, which they alleged was chiefly a grass farm, at Whitsunday, 1807, and ought not to be allowed to possess the land and claim the rent over and above; and, 2dly, that as the crop was sown before the term of the Appellant's entry, that crop by universal practice fell to be reaped by the Defenders. And they insisted that, in all cases of grass farms having a Whitsunday entry, *crop* 1807 did not mean the corn crop of that year with the pasturage of the year preceding as its appendage, but the grass crop of that year with the corn crop of the following year as its appendage, and that there was nothing in the contract which excluded the rule of law; and that the division of rents in parts proportional to the profits of the different crops was a thing unknown in the practice of Scotland; and *Campbell v. Campbell*, Kilk. 11th June, 1745—

Kerr v. Turnbull, Elch. 3d July, 1760—and *Elliot v. Elliot*, 28th Nov. 1792—were cited. March 7, 24, 1817.

GRASS FARM. —RENT, &c.

Interlocutors.

The Court of Session, by several interlocutors from June, 1810, to 2d July, 1813, decided in favour of the Respondents, and thereupon the Appellant appealed.

Judgment. Mar. 24, 1817.

The cause was heard in the House of Lords on the 7th March, 1817, and on 24th March, 1817, the Judgment of the Court below was AFFIRMED, the Lord Chancellor observing that he should have doubted whether the Court below had rightly construed the words "crop and year 1807," if these words had not acquired the meaning which they put upon them by the usage of Scotland. But as they were better acquainted with the usage in Scotland, it would be hazardous to reverse the judgment. Still considering it, however, as a case of some doubt and difficulty, he did not advise their Lordships to give costs to the former proprietors.

Judgment AFFIRMED, with 120*l*. costs to the tenant.