1787. *June* 16. ELIZABETH CHRISTIE, Petitioner.

JURISDICTION.

A man having died, leaving his wife with child, the Court named a factor for managing the funds, until the birth of the child *in utero*.

ELIZABETH CHRISTIE applied to the Court by petition, setting forth that her husband, George Veitch, an undertaker for the building of houses in Edinburgh, died lately, without issue existing, but leaving her with child: That George Veitch had, before his death, contracted for the building of certain houses within a limited time, under a penalty: That, in this case, there was no one who could serve to him, and that a tutor could not be named to a child *in utero*; yet that there might arise damage from a delay in finishing the works begun; and therefore praying that William Veitch, the nearest agnate, might be appointed factor, or *curator bonis*, with power to him to complete the buildings.

The Lords declined to interpose their authority for bestowing such ample powers; but,—

On the 16th June 1787, "The Lords named William Veitch factor for managing the funds, &c. until the birth of the child *in utero*."

For the petitioner,—Allan M'Connochie.

1787. *June* 21. JOHN M'KENZIE, LORD M'LEOD, *against* Sir JOHN ROSS of BALNAGOWAN, Bart.

THIRLAGE.

No multure can be demanded for grain due to the superior of the astricted lands, although he shall accept of a sum of money in lieu of it.

[*Faculty Collection*, *X.* 37; *Dict.* 16,070.]

HAILES. Lord Cromarty's manifesto, or declaration, call it what you will, is not probative; and there can never be a *jus quæsitum* to the suckeners from

a paper lying in the repositories of Lord Cromarty. The suckeners certainly knew their own rights better than the commissioners of the annexed estates did; and it is singular that, past all memory of man, they and their predecessors should have continued to submit to a heavy exaction, and that they should not till now have discovered how much they were wronged. The defenders are not bound to pay a converted price for the grain and meal deliverable as feu-duty. Let them offer the *ipsa corpora* to the King's Chamberlain, and then let them plead that they are not liable in multures for their feu-duties.

MONBODDO. If the Crown had exacted the grain, the tenant would not have been liable; but, while it does not, the tenant must be liable, as well as for any other grain.

ROCKVILLE. If the Crown were to levy the *ipsa corpora*, and then to assign what was so levied, the assignee would not be obliged to bring the grain to the mill. Here the defenders are in the same situation as assignees. [*That* is taking for granted the very proposition which was to be proved.]

JUSTICE-CLERK. This severe thirlage must not be extended. The principle of common law is, that rent, payable in kind to the master, is exempted from thirlage; for *res sua nemini servit.* The Crown may exact the *ipsa corpora* whenever it chooses; but, while it does not, multures are not exigible.

HENDERLAND. The meaning of the clause of restriction is, that all grain capable of being grinded is thirled; and the feu-duty is in that situation until the Crown shall exact the *ipsa corpora.*

ESKGROVE. This is a mere occasional and temporary *indulgence.* If the Crown were to *stipulate* for money instead of grain, then multures would be exigible.

On the 21st June 1787, "The Lords found that, as the thirlage is of *omnia grana crescentia*, the defenders cannot plead any exemption with regard to the Crown rents;" adhering to the interlocutor of Lord Monboddo.

Act. G. Ferguson. *Alt.* A. Abercrombie, R. Dundas.

Diss. Eskgrove, Henderland, Rockville, Dunsinnan, Justice-Clerk (in the chair.) Declined themselves,—President, Ankerville.

Henderland spoke well in support of the Ordinary's interlocutor; but, probably having met with some arguments which he had not considered, voted against it.

On reclaiming petition, with answers:—

BRAXFIELD. Seed and horse corn are necessarily excepted from thirlage; for he who does not sow can bring nothing to the mill. And it would be absurd to oblige one to pay multure for what cannot be brought to the mill without damaging the thirlage. He who feeds his horses can bring nothing to the mill. As long as a titular draws teinds, they are exempted from thirlage; but, if the teinds are once valued, the proprietor is bound to grind. So here, if the Crown levies the *ipsa corpora*, they are not to be ground at the mill; but not so when the Crown is satisfied with a conversion. Suppose a man were to bring his whole farm under culture by the spade, (and I lately saw

sixty acres in that state, with great hopes of a fine crop,) he will not have any exemption on account of horse corn: but whatever a man can bring to a mill, he must bring, when the thirlage is of *omnia grana crescentia.* (Quoted the case of *Maxwell of Calderwood* and the *College of Glasgow.*)

JUSTICE-CLERK. I cannot imagine that the superior meant to thirle his own rent. The case of *Maxwell of Calderwood* related to meal.

On the 8th August 1787, " The Lords adhered as to *meal,* but altered as to *grain.*"

Diss. Braxfield, Monboddo, Stonefield, Hailes. Declined themselves,—President, Ankerville. *Non liquet,* Dunsinnan, who was called from the bills.

Cause carried by casting vote of Lord Henderland, (in the chair,) who rather inclined to the former interlocutor.

1787. *July* 18. ANDREW STRACHAN and OTHERS *against* WILLIAM ANDERSON and JOHN ROBERTSON.

LITERARY PROPERTY.

Construction of the statute 8th Ann. c. 19.

[*Dictionary,* 8310.]

HAILES. I cannot reconcile myself to the notion that an author has a copyright to the corrections and additions which he may, from time to time, see occasion to make in his works. Such corrections and additions are not a book or treatise: they are rather an acknowledgment to the public that the former book or treatise was not so complete as it ought to have been. [When judgment went in this cause against my opinion, I gave a hint to Dr Robertson, who has already enjoyed the exclusive right of printing *The History of Scotland for twenty-eight years,* that, by entering at Stationers' Hall his improvements for a new edition, he may obtain a prorogation of his patent.]

ESKGROVE. The Act of Queen Anne ought to be liberally interpreted. An author may have a property in his own additions and annotations. This was explained by the English court in the case of Dr Newton's Annotations on Milton. If the doctrine be good as to a voluntary annotator, much more as to the author himself. [I cannot follow this reasoning. Dr Newton wrote notes on Milton, which might have been published as a separate work, being by a different author. But let us take the case of authors who have written commentaries on their own works. Butler wrote notes on Hudibras, Pope on the Dunciad: Can we say that Butler and Pope, by writing illustrations on their