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

own works, acquired a copyright different from *that* which they had in the works themselves, and subject to a different kind of limitation or prescription ?] But I do not carry my conclusion any farther than to the sheets on which the additions are printed.

JUSTICE-CLERK. I see no principle which can exclude an author from a property in the supplement of his work, as well as in the work itself. [This is not logical, for the terms are changed : a *supplement* is a separate and independent work.] The printer, by inserting the additions, has shown that he considered them to be of value.

HENDERLAND. The difficulty is how we ought to distinguish as to the extent of the invasion of property, and as to the consequences thence arising. I incline to limit damages in the manner pointed out by Lord Eskgrove.

On the 18th July 1787, " The Lords, in substance, decerned against the defenders," adhering to their interlocutor of the 6th March 1787 ; " but remitted to the Ordinary to hear as to the number of sheets to be damasked, and also as to penalties."

Act. R. Blair, &c. *Alt.* Ch. Hope, &c.

Reporter, President, for Justice-Clerk.

1787. *July* 21. DAVID DONALD *against* ANNE KIRCALDIE.

TENOR.

Special *casus omissionis* required of a marriage-contract.

[*Fac. Coll. IX.* 529 ; *Dict.* 15,831.]

BRAXFIELD. There is no difficulty as to the tenor. If a party destroys a deed, I will presume the ordinary clauses, and so fill up the blanks. The difficulty is as to the *casus omissionis.* When there is a disposition of lands, with infeftment, and more especially with possession, there is no occasion for a proof of the *casus omissionis.* The case is different when obligations remain personal. A marriage-contract, standing *in nudis finibus contractus,* may be given up or destroyed : *Who* is entitled to complain ? There are no children existing. The complainer here is the heir of the husband : How can he have any ground of challenge ? Can he say that the husband tortiously destroyed the marriage-contract ? [He quoted the case of *Campbell of Shawfield.*] The case comes to this,—Has the pursuer proved that the marriage-contract was tortiously destroyed, or lost *casu fortuito ?* The *former* is not offered to be proved, and the *latter* is not proved. We must take Kircaldie's evidence as it stands : We cannot reject one part of it while we admit the other.