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.

JUSTICE-CLERK. I see here an *enixa voluntas* in the husband to provide for his wife in a more ample manner than had been done by the marriage-contract. My only difficulty lay in this, how far Kircaldie, being the trustee and custodier of the deed, had a power to cancel it while his daughter, and her possible issue, had an interest in it? It is certain that, by cancelling it, he put them in the power of the husband.

ESKGROVE. I had the same difficulty. At the same time I could not go the length of saying that, in no case, a marriage-contract may be destroyed. Had the widow thought it of moment, and for her interest, to resort to her conventional provisions, *she* might have proved the tenor of the marriage-contract. But *that* is *jus tertii* to the pursuer. The widow not only acquiesces in the cancellation, but she also homologates it. The pursuer may have an *interest consequential,* but he has no *right.* But, supposing that he had an interest, I answer, that the heir is bound by the act of the predecessor; and I think it is proved that the predecessor consented to the cancellation.

HAILES. It has been said, in the course of the pleading, that there is nothing improper in putting an end to a marriage contract by the act of throwing it into the fire. This ought not to have been said, for the method was not only uncommon but hazardous and wrong. No man ought to step out of the common road of business. A short memorandum or docquet subjoined to the deed would have saved all this trouble to the parties and to the Court.

On the 21st July, " The Lords, having considered the special circumstances of this case, dismissed the action, and assoilyied."

Act. G. Ferguson, Ilay Campbell. *Act.* H. Erskine, R. Dundas.
Hearing on proof.

1787. *July* 25. JOHN RAMSAY *against* JAMES LISTER.

ARRESTMENT.

A prior arrester, who entered his claim before a decree of furthcoming was extracted, preferred to a posterior arrester, who brought the process, although the former, after arresting, had not proceeded in his diligence for three years.

[*Fac. Coll. IX.* 531 ; *Dict.* 824.]

BRAXFIELD. It is nothing to the purpose what is said concerning the quinquennial prescription. An arrester, if *in mora,* cannot stop the effect of another man's forthcoming. If a decreet of forthcoming is obtained, then the first arrestment must be preferred.

ESKGROVE. The multiplepoinding was in Court. This stopped preference by forthcoming.

On the 25th July 1787, " The Lords, in respect of the *mora* on the part of