seller might have taken back the land. The instances produced as to practice, confirm me in my opinion. If there had been evidence that bonds of caution were wont to be received after a certain number of days, I should have paid regard to such practice. But there is no such practice. Bonds of caution have been received one day, and two hundred and forty days after the time conditioned; and there is no example of the question having been tried and determined against the prior offerers claiming.

ESKGROVE. The condition, being made absolute, is in favour of the creditors; and therefore they are not bound to insist against the prior offerer, but the prior offerer may insist, by protest, to be relieved. Here the creditors pass from the last offerer, and require the prior to stand to the bargain: what defence could the prior offerer have? None. The last offerer, when he omits to find caution, as conditioned, must run that risk which has happened in the present case.

BRAXFIELD. By the lapse of thirty days, or of any other stipulated time, there is no *jus quæsitum* to the prior offerer; for the stipulation is in favour, not of him, but of the creditors. When, however, the creditors say that they are not willing to rely on the personal security of the last offerer, but, on the contrary, require the prior offerer to find caution within ten days; there the prior offerer is bound, and the transaction is finished.

PRESIDENT. If the last offerer could say that, by the act of Providence, he was prevented from finding caution, much might be said; but that is not made out here. It is of consequence to keep the proceedings in sales accurate.

On the 8th March 1788, "The Lords refused the petition, and found that the respondents are entitled to be preferred, in terms of their offers."

Act. Ilay Campbell. *Alt.* G. Fergusson, W. Honeyman.

Reporter, Swinton.

1788. *June.* JOHN M'KENZIE, LORD M'LEOD, *against* LIEUT. COL. ALEXANDER ROSS and OTHERS.

See supra, 21st June 1787.

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; Dictionary,* 16,070.]

JUSTICE-CLERK. From time immemorial there never was any deduction claimed or given. Had a contract been entered into, in terms of the petitioner's argument, it would certainly have been good; and how can we better judge of a contract having been entered into than by immemorial usage: horse and seed

corn are excepted in words; but, without words, they would have been exempted, from the nature of the thing. *Omnia grana crescentia* means all that can be brought to the mill. This was determined in the case of *Maxwell of Calderwood.* When the crown demands the *ipsa corpora,* it will be a good defence,—"I could not bring more to the mill, for the crown has carried off a hundred bolls." Suppose a smaller number of horses should be employed on the lands than formerly, in consequence of an improved method of agriculture, could it be said, "I must have an allowance for corn, which, in former times, I did bestow on my horses."

ESKGROVE. I am not clear of this being a thirlage of *omnia grana crescentia.*

PRESIDENT. I suppose this to be a case of *omnia grana crescentia.* I never incline to extend a thirlage beyond its qualities. Farms are excepted: this enters into all writings from the beginning. If the superior had insisted to have ungrounded corn delivered to him, he could not have insisted that they should grind that corn. The case of Calderwood is not in point: so far as meal was deliverable to the College of Glasgow, there was no reason why the multure of that meal should not be paid. The officers of Exchequer may move the crown to exact the corn, and then, it is admitted, multures would not be due.

DREGHORN. Horse-corn is *facti;* so no more can be exacted than used. Should the superior, for a valuable consideration, convert the payment of corn into money, there would be an end of the thirlage. The superior does what is equivalent in the mean time, by not exacting the corn, which he might exact.

On the 17th June 1788, "The Lords found Lieutenant Colonel Ross, and the others, entitled to an exemption from the thirlage claimed, to the extent of that part of the crown rents which is payable in corn ungrinded, and not in meal;" adhering to their interlocutor, 21st June 1787.

Diss. Stonefield, Hailes, Justice-Clerk.

1788. *June* 17. MISS HENRIETTA SCOTT *against* JOHN HAY BALFOUR and OTHERS.

COLLATION.

Heirs, whether *alioqui successuri* or not, and whether *ab intestato* or *provisione hominis,* must collate, in order to claim any share of the moveable succession. An heir is not bound to collate heritage in Scotland, on account of succeeding to executry-funds of the predecessor in a Foreign country.

[*Fac. Coll. X.* 1; *Dict.* 2379 and 4617.]

ESKGROVE. An attempt has been made to distinguish between one set of heirs and another. I do not see the reason of this. When the ancestor gives part to one heir, and does not give the whole, then there may be a *quæstio voluntatis;* but that is not the case here. Miss Scot is heir of investiture to her grandfather.