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.

DREGHORN. I do not choose to give a positive opinion, having, while at the bar, written much as lawyer for Miss Scot. One case has been put, and, as I think, not sufficiently answered. A man dispones a small heritable estate by strict entail: it is hard that the heir should not have a share of the moveables, while he is not entitled to collation. [This case will rarely, if ever, occur; and should it, the heir might say, Take the entailed estate who will, I will not.] I should then consider the small entailed estate as *præcipuum*, or at least that, on assigning maills and duties, which is his whole interest, he should have a share of the moveables. Here there is no strict entail; but if Miss Scot does dispone her estate she counteracts the will of the ancestor. Now it is admitted that collation may be excluded by the will of the ancestor.

PRESIDENT. The law has established two different sorts of succession, one in heritage and another in moveables. As we give the succession of moveables to the nearest in kin, we favour the heir so far, that, if he be willing to collate all that the law gives him, we admit him to a share in the moveable succession. If a proprietor settles a small heritable estate by an entail, he excludes collation, but he does not deprive the heir of his natural right to the moveables. A second son, taking an estate by settlement from his father, is entitled to take his share of moveables. The decision in the case of *Ricart* is very strong. I cannot distinguish between Miss Scot taking by the will of the last or of any former proprietor. If the heir takes *præceptione hæreditatis*, the law holds that as equivalent to legal succession. But I think that Miss Scot is not an heir.

JUSTICE-CLERK. The making a distinction between heir-at-law and heir of provision is unintelligible: for every estate is taken by an heir of investiture upon a service. Any person taking by a settlement to heirs whatsoever, there must then be place for the law of collation. Miss Scot takes as an heir of investiture. If there had been no preference to the oldest daughter, all the three Miss Scots must have collated the moveables. Is it not strange, that, because she has the whole, she must not be bound to collate, though, if she had only a third, she must? "It is presumed that the former settlement is his." But this is not the presumption of the law. When a man makes no settlement, the law presumes that he has no will or predilection. This is the great argument for moveables going *ratione rei sitæ*. When a man makes a settlement of a part and not of the whole, it is presumed that he meant to give a particular portion to one, and there is a presumption that he meant it should go as a *prælegatum*, for so far he has declared his will. As to the case put of an entailed estate, he who takes such estate takes it *præceptione hæreditatis*. Besides, here there is no hardship, for he may repudiate, or he may be bound to make over the maills and duties to the next in kin, and so collate.

On the 17th June 1788, "The Lords found that Miss Henrietta Scot is not entitled to claim any part of the executry of her uncle, David Scot in Scotland, without collating his heritable estate, to which she succeeds as heir;" adhering to their interlocutor, November 1788.

For Miss Scot, Ilay Campbell. *Alt.* A. Rolland.

Reporter, Justice-Clerk, (now President.)

Diss. Swinton, President.

Non liquet, Dreghorn.