quiring interlocutors to be signed does likewise appoint that they be signed by the judge before he go off the bench. Yet this is wholly obsolete, and was repelled in the case of *Ross of Tillisnaught* against *William Turner*. And if all decreets subscribed by the judge after he comes off the bench were reduced, multitudes of decreets would fall to the ground.

The Lords thought the case very strait on both sides; for it would be hard to make Patrick Houston's heirs liable for so great a sum upon a decreet in absence: and, on the other hand, the loosing of the decreet was to make my Lord Ross lose his whole money, and the only mean of probation thereof: and that it was not enough for Patrick's son bluntly to say, "Prove your libel;" but he ought to furnish what documents he could, that his father had accounted for his intromissions in that trust, as exercitor of the ship. And, therefore, they fell upon this, That George Houston and his curators should give in a condescendence, upon oath, of all the evidence they had beside them, after search, of that voyage to Portugal and back to England, and what he made of the cargo, freight, and stock-purse, or by his selling the ship; that it may appear how far he was debtor to Lord Ross or the rest of the owners, and how he could discharge himself of the same. The least effect Lord Ross's decreet can have, being to relieve him of the burden of proving these particulars, and transfer the *onus probandi*, for clearing them up, on Mr Houston. *Vol. II. Page* 436.

1708. *February* 27. The EARL of MARR *against* GABRIEL RANKIN of ORCHYARD-HEAD.

THE Earl of Marr against Gabriel Rankin of Orchyard-head. [Orchyard-head] holding his lands of the Earl for the reddendo of *decem bollas frumenti* in his charter, the debate arose anent the legal sense and import of the word *frumentum*; the superior alleging it signified wheat, and the vassal, that it was only ten bolls of oats, no wheat growing in that ground.

It was ALLEGED for the Earl,—That *frumentum*, though sometimes in the general it signified any corn, yet, in its strict and proper signification, it was restricted to wheat, as appeared by the glossators and lexicographers on that word: and, *esto* no wheat grew there, that could not be the rule, because, in many places where wheat grew not, they were in use to pay the price of it, though not the *ipsa corpora;* and he and his predecessors had, for a long time, paid the sheriff's fiars, or current country rate for wheat; which sufficiently explained the charter, if there were any ambiguity in it. And Beza, in his translation of the Greek New Testament into Latin, has understood it so, being a great critic in the languages, at the 27th chap. of the Acts, v. 38. "They threw the wheat into the sea;" he renders it *projecerunt frumentum in mare, ad exonerandam navem*: and, in French, *froment* signifies wheat.

ANSWERED,—What the gloss or lexicon say is not much to be regarded, for they give the sense of the barbarous and degenerating times of the Latin tongue: and it is not true even as to them either; for they make *frumentum* to come *a frumine*, and to be a generic term for any kind of *segetes*, as *hordeum, avena, triticum*, as contradistinct from the *legumina* and pulse, such as pease and beans: and the true Latin word for wheat is *triticum*. The common use of

speaking and the *consuetudo regionis* explain this. If any man, on the road, call for corn to his horse, what stabler will bring him wheat? If I bargain for a chalder of corn, would I not be laughed at if I demanded wheat? Now, the custom of the country must overrule this; why seek you wheat where there is none? And though I, and others in my circumstances, have for sundry years paid wheat, at least the value of it, shall that error wreath a perpetual servitude on my land: For law says, *error communis dat nullum jus pro futuro.* And though *frumentum* may signify wheat in those places where it grows, yet that cannot be stretched to my country, where it uses not to be sown.

The Lords thought the use of payment would go far here to explain the meaning of parties; and, therefore, allowed a conjunct probation, before answer, as to the manner that this feu duty has been paid. *Vol. II. Page* 437.

1708. *February* 27. MURRAY *against* MURRAY and DUNDAS.

MURRAY's wife being infeft in a tenement in the Canongate, thus, *in dimidietate trium partium,* she dispones this to her husband; but when the clerk comes to extend the seasine, he infefts him not *in dimidietate trium partium,* (as the wife's, the disponer's seasine ran,) but *in dimidietate tertiæ partis tenementi.* The daughter, and only heir of the marriage, serves herself heir to her mother, and infefts herself, as her mother was infeft, *in dimidietate trium partium*: and having withdrawn from her father, and disponed to one Ann Dundas, and competition arising for the rents, it was contended, The father, by his infeftment, had but right to a half of a third part, which makes a sixth part of the whole, and they had the half of three parts; which being the half of the whole, they behoved to be preferred to the maills and duties, paying him the sixth part.

ANSWERED,---This was but a pure and absolute mistake in the notary, turning the *numerus ordinalis* into the cardinal, ignorantly thinking them all one; and the mother never designed any such restriction. Yet the Lords found they could not mend it, and, therefore, found he had right to the said part, and Dundas to the rest.

Then he ALLEGED,---That the principal disposition bore a marginal note, disponing the half of three third parts to him; which must regulate all: but the extractor had neglected to take in this margin into the extract now lying in process; and, therefore, craved a warrant to produce the principal.

The Lords ordained the clerks to transmit the principal, to see if that marginal note was signed, and how it runs, and why it was omitted in the extract. By thir last two decisions, we may see what care ought to be taken in wording clauses, and that clerks and notaries should be exact in the Latin tongue, as the 45th Act 1587 requires; which few of them are, as, by experience in their examinations, I oft found; and therefore remitted some of them. And it were to be wished, for the general good of the lieges, (who oft lose their causes through their ignorance,) that the Lords were most strict in admitting them. It is an old observe of the eminent Azo, *per nequitiam et imperititiam notariorum peribit mundus.* *Vol. II. Page* 438.