COVINGTON. This was plainly an illegal *transactio de crimine.*

On the 26th November 1776, "The Lords sustained the reasons of suspension."

Act. J. Swinton. *Alt.* R. Cullen. *Reporter,* Covington.

1776. *November* 26. THOMAS HEUGHAN *against* WILLIAM RAE.

REPARATION.

A cart loaded with a cask of wine having been carried over a precipice, the carter found not liable in damages, there being no negligence.

[*Supplement, V.* p. 577.]

HAILES. I have a great respect for the civil law; yet no text of the civil law shall convince me that a carter holding the halter of his horse, and in that situation forced over a precipice, with his cart and horses, is liable for damages which may arise to what he is carrying in his cart.

COVINGTON. If carters are not bound to answer for the goods committed to their charge, the consequences will be dangerous. I am not satisfied that there was no negligence here.

GARDENSTON. This is a merciful interlocutor; but contrary to the principles of the civil law, which I greatly respect, and would wish to follow. There is a degree of neglect *here.*

ALVA. The carter did whatever was in his power, and, I think, acted with judgment, though unsuccessfully.

MONBODDO. I am for adhering to the principle of the civil law, until better principles can be pointed out. A man, acting in the business which he professes, must be liable, unless the damage happen *casu fortuito.* A carter is answerable not only for himself, but for his horses. His foremost horse was not fit for his business, for he grew giddy; neither did the carter act judiciously in his attempt to save the horses and cart. It is in vain to talk of the danger of the road; for it was just in the ordinary state, and had been often travelled without any misfortune happening to passengers.

KENNET. A carter who undertakes to convey goods, is answerable for himself and for his horses. But this rule does not clearly apply to the present case. The horse might, in general, have been fit for his business, though on a particular occasion he grew giddy. If the carter was guilty of *culpa lata,* he must be liable. But the pass was plainly dangerous, and, to prevent such accidents, a parapet wall has been built.

KAIMES. I revere the civil law which says that a man, professing any art, is bound to an exact skill in performing the duties of that art. But there may be a case when there is no perfection, and yet no *culpa.* Artists must necessarily have different degrees of skill: all are not of equal abilities. How can we censure the carter, when the judges who profess knowledge in carting (Lords Mon-

boddo and Alva,) differ as to the propriety or impropriety of his conduct. We ought to be cautious in applying rules where the damage may be not only great but ruinous.

On the 26th November 1776, "The Lords sustained the defences and assoilyied;" adhering to the interlocutor of Lord Alva.

Act. W. Nairne. *Alt.* A. Crosbie.

Diss. Monboddo, Covington. *Non liquet*, Gardenston.

1776. *November* 26. ALEXANDER BRODIE of Windiehills *against* WILLIAM MURDOCH.

TACK.

When a tenant enters to grass lands at Whitsunday, which were afterwards ploughed by the master's consent, Can he be removed at the term of Whitsunday, or is he entitled to the outgoing crop?

[*Faculty Collection, VII.* 372; *Dict., App. I., Tack, No.* 3.]

AUCHINLECK. Whenever ground is once set a-ploughing, it becomes *arable* as much as any part of the farm.

MONBODDO. The master has himself to blame in not making *that* paction which he would have the Court to make.

KENNET. The tenant entered at Whitsunday, and so had the grass of that year. According to his argument he will have four years' possession, and yet pay only three years' rent.

HAILES. This case may frequently occur in practice. When a master gives permission of ploughing up grass without making any prudent limitations, in such case he may suffer in the end, and the tenant may profit; but that is the fault of the master in not making a more judicious bargain. The permitting a tenant at will to break up meadow, is in itself no very prudent or consistent thing.

COVINGTON. The tenant might at any rate have ploughed up the meadow, for it had been formerly ploughed up for nine years successively. It is an invincible argument in favour of the tenant, that, if the master's argument is good, he might have removed the tenant at the first year: What then would the tenant have got? No profit, but, on the contrary, loss.

GARDENSTON. The circumstance which touched me, is, that every inch of ground was ploughed: which is gross mislabouring. What the Sheriff did was a just reparation to the master.

MONBODDO. This piece of ground happened to be in grass, it was ploughed up in rotation. What was there to hinder a tenant from doing this? The present action is not for mislabouring: that action may be reserved to the master.