

1776. *January 25.* CUNNINGHAM *against* JOHN GRAY.

IN an action of damages, Cunningham *against* Gray, for not lending a sum on heritable security, but on personal, contrary to order, as alleged; the Lords, finding no cause of complaint against the writer, and that the steps taken by him were known to the pursuer, assoilyied, and gave expenses.

See 29th November 1710, *Wood*, observed by Forbes; 10th June 1698, *Wishart*; 21st November 1704, *Kirkpatrick*; 4th November 1704, *Foulis*; 3d January 1696, *Scots*; 28th December 1704, *Wilson*, observed by Fount. See Dict. Vol. II. p. 293.

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

A CART loaded with a cask of wine, drawn by two horses, coming from Cree town to Dumfries, went over a precipice at the bridge of Tarf, when the cask burst, and the wine was lost. In a pursuit against the carter, the Lord Alva, Ordinary, ordained the defender to give in a special condescendence of the facts he offers to prove in support of his defence, that he took the common care of the wine, and that the loss thereof was owing to accident the defender could neither foresee nor prevent. The condescendence was given in, and a proof granted. And, upon advising the proof, his Lordship, 7th March 1776, "Found it proved, That the loss of the wine was not occasioned by any culpable neglect on the part of the defender, but was owing to the dangerous situation of the road at the bridge of Tarf; and therefore he assoilyied the defender, and found no expenses due to either party."

The Lords adhered.

It appeared to a majority of the Lords, at advising, that the carter had done what he could to keep up the cart and prevent the accident, which was owing to the foremost horse; and when he could not keep up the cart by means of the shaft horse, he struggled so as to go over with it.

Others of the Lords thought it was owing to mismanagement in his own art, no deficiency in his horses; and that he was therefore liable. So thought Co-vington and Monboddò: Lord Gardenston did not vote.

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1776. *December 10.* ROSS *against* HAY.

IN a pursuit against a messenger for not doing his duty in putting diligence in execution against a debtor; it was *inter alia* pleaded, in his defence, that his doing so would have had no effect as to the recovery of the debt, but would only have served to add affliction to the afflicted debtor, who was already more than *obærat*us. The Lords reprobated the defence as highly dangerous: they