

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.

---

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.

---

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

thought the duty of the messenger was to obey his orders; and as, in this case, he had not, they found him liable for the debt.

---

1776. December 18. PATRICK RITCHIE *against* ANDREW PITCAIRN.

ANDREW Pitcairn, writer in Dundee, had been intrusted by Patrick Ritchie, baker there, in purchasing a house from Maclean, mariner in Dundee, for whom Pitcairn was also doer. Ritchie alleged, that he had made the purchase upon the faith of an opinion given him by Pitcairn, that he might make the purchase safely; whereas, now, it appeared that he could not and did not make the purchase safely, on account of an heritable debt due to Jean Reid, which Pitcairn not only knew of, but had wrote out an heritable bond for the same.

Pitcairn, on the other hand, set forth, that, at the time he gave his opinion, he told Ritchie of the heritable bond to Reid, and indeed that the same was known to half the town of Dundee; but, that he was of opinion that the other part of Maclean's subjects remaining unsold were more than sufficient to pay said incumbrance: That they were bought by Ritchie himself since that time, and the price applied for payment of Reid's debt; but that, by the fall of houses in Dundee since the year 1772, there would be a shortcoming. It was further alleged, that part of the price of the first purchase made by Ritchie, had been made to Pitcairn in order to apply it in part payment of the debt to Reid. But it was answered, that although it was true that Pitcairn had received part of said price, but not for the purposes aforesaid, yet it was equally true that he had applied it according to Maclean's directions, and had cleared with him for it.

In an action of damages at Ritchie's instance against Pitcairn, before Lord Kennet, his Lordship, 5th December 1775, "ordained the pursuer to give in a condescence of facts he alleges and offers to prove, in order to infer damages."

Which being given in with answers, he sustained the defences and assoilyed, 5th March 1776.

Afterwards, upon a reference to oath, Pitcairn was examined; and, upon advising thereof, the Ordinary found that the oath did not prove the points referred to it, and therefore adhered. And this day, upon advising bill and answers, the Lords adhered.

---

1778. February 5. FACTOR for the CHILDREN of ARCHIBALD M'HARG *against* M'LAURROCH.

ARCHIBALD M'Harg, writer, being employed, *in sua arte*, to make up titles to the estate of Nether Craigenlay, in the person of M'Laurroch, his client, he did so. But it was alleged, that he did so in an improper and inept manner, by entering him heir in general to his grandfather, and not heir of provi-