KAIMES. If you can confine the question to the present fact, good; but, if you open a door, how can you shut it?

PRESIDENT. I do confine the question to the *ipsa corpora* of moveables. I do not extend it to matters having *tractum futuri temporis.*

ELLIOCK. We do not hear of any actions for implementing such prestations among country people. This shows the general opinion that such prestations are not probable by witnesses.

AUCHINLECK. This rather shows that there is no such opinion; and that no man disputes the payment of an obligation where witnesses are ready to check him.

On the 26th February 1771, "The Lords found the promises libelled not probable by witnesses;" adhering to their former interlocutor.

Act. J. Boswell, H. Dundas. *Alt.* H. Erskine.

Diss. Coalston, Gardenston, Auchinleck, Barjarg, Hailes, Monboddo, President.

Miller did not reclaim. He told his counsel that he would not give the Court any farther trouble; and, at the same time, declared that he would not put his father-in-law upon oath, lest he should perjure himself.

1771. *February* 26. CHARLES INGLIS *against* SIR ROBERT ANSTRUTHER, &c.

WARRANDICE.

Incurred only by Eviction.

[*Fac. Coll., V.* 243; *Dictionary,* 16,633.]

PRESIDENT. The Extract of the Decree Absolvitor is a valuable book in Mr Inglis's library. I should think that he might have been satisfied to pay the expense of it. His argument goes upon this,—that the decision of this Court was scarcely just; and that the House of Lords affirmed it from the deference due to this Court in matters respecting its own officers. This is a strange plea for Mr Inglis to make, and is not very decent with respect to either Court.

COALSTON. If Waddel had prevailed, damages would have been due; but he did not prevail, and no eviction has happened. The question,—how far expenses due? There was a conditional obligation in case of eviction. But, as there was no eviction, there was nothing exigible. *L.* 18, *Cod. de Evict.* The effect of an instrument, notifying distress, is only to exclude the person warranting from the objection of collusion.

KAIMES. Unless there is eviction, there is no warrandice.

MONBODDO. An obligation to warrant a subject does not imply an obligation to pay every expense incurred in defending the subject.

On the 26th February 1771, "The Lords dismissed the process; assoilyied, and found expense of extract due."

Act. R. M'Queen. *Alt.* D. Grahame.

Reporter, Kennet.

1771. *January* 25, and *March* 7. WILLIAM OGILVY *against* DAVID ROSS, &c.

PERICULUM.

A at London sent a cask to B at Edinburgh, addressed "to B. Esq., by the ship Adolphus, Ross, master." The master, upon his arrival at Leith, lodged the cask with a warehouseman, who, being unable to discover B by the above address, kept the goods till they were spoiled. No bill of lading or receipt was transmitted by A to B, nor did he send notice that the goods were to be shipped. In an action against the master and the warehouseman; found that neither of them was liable for the loss.

[*Dictionary,* 10,099.]

GARDENSTON. This is a question of very great importance in a very small cause. I distinguish the case of the shipmaster from that of the warehouse-keeper. I am clear that the foreign merchant ought to give notice to the merchant here, that he may be on the watch to receive the goods on their arrival. The shipmaster is bound to transport the goods, and to deliver them when called for. It is not practicable for him to seek out the persons interested in the goods, nor is he bound so to do. All that he can do, is to lodge them in some cellar till they be called for. It is another thing, if it appear, from the proof, that the master or his mate denied that they had the goods, or refused to deliver them: in such case damage would be due. But here it is probable that no demand was made for the goods at the arrival of the ship. As to the owner of the warehouse, a different duty is incumbent upon him: if we suppose that he is not bound to make inquiry about the owner of the goods, the goods would remain undiscovered.

AUCHINLECK. The shipmaster was not bound to send about inquiring where Ogilvy lived. There was no sufficient inquiry made at the shipmaster by Ogilvy; no bill of loading was produced to him, nor was there any evidence of the authority by which he was questioned. As to the owner of the warehouse, the case is more difficult. If Ogilvy had lived at a great distance, he was not bound to inquire after him, nor did he know that there was *periculum in mora;* for there was no mention made of apples on the direction of the cask.

PITFOUR. I think, for the reasons already given, that the warehouse-keeper is liable. If those people do not know their duty, it is high time for us to teach it them.

HAILES. Concur in the opinion given as to the shipmaster. I do not