provisions expended in the former parts of the voyage, in respect that the vessel was not totally disabled, and that Inglis refused to implement his contract, by completing the voyage; and remitted to the Ordinary to proceed accordingly."

Act. G. Ogilvie. *Alt.* A. Crosbie.
Reporter, Hailes.

1776. *November* 26. GEORGE WILLOX *against* JOHN CALLENDAR and WILLIAM WILSON.

BILL.

It was found that a Bill, of which the acceptance was procured by concussion, was ineffectual in the hands even of an onerous indorsee.

[*Folio Dict. III.* 81; *Dict.* 1519.]

MONBODDO. The bills were indorsed for behoof of William Willox, and for value. The only question is as to the effect of *vis et metus*: that is a good exception, even against an onerous indorsee. Although a man is imposed upon in signing a deed, it is still his deed; but when a man is forced by terror to sign a deed, it is no more his than if his hand had been led. Bills for a game debt may still be excepted against, though indorsed for value: this serves to explain the principle. The only question is, Whether the exception applies?

[As to this, his opinion was not very clear.]

GARDENSTON. It makes no difference whether the bills, when delivered, were indorsed blank or not. As to onerosity, I should doubt. If the cause rested *there*, I rather incline, from the *species facti*, to hold that here there was an indorsation in security. Be this as it will, *vis et metus* is pleadable against an onerous indorsee. My brother is mistaken as to his argument concerning game debts. In such case it has been repeatedly found that an onerous indorsee is entitled to force payment; and with good reason, for why should your facility in granting a bill hurt me an innocent person, who advances the money on seeing the security of your name. But wherever there is *vis et metus*, there is no deed: here there is as strong an instance of fraud and concussion as can be conceived.

KAIMES. I cannot perfectly concur in what is said as to the effect of force and fear. If a man clap a pistol to my breast, and make me sign a deed, the deed is good for nothing: my hand is there, but not my intention. I doubt as to the application to this case: the grant was intentional, in order to escape prison, and it was effectual to that purpose. I doubt whether this objection would be good against an indorsation for an onerous cause; but I do not see any such indorsation *here*.

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-