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.

AUCHINLECK. If action for *mislabouring* is reserved, we ought, in the meantime, to find expenses due by the master for *mispleading*.

KAIMES. A tenant cannot plough up old grass reserved for the cattle of the farm. But I doubt whether this meadow can come under the denomination of old grass; but, let that be as it will, in common law a bargain is a bargain. Here the tenant was at will, and had liberty to plough: it is impossible that the master could turn him out directly.

On the 26th November 1776, "The Lords assoilyied the tenant;" adhering to Lord Elliock's interlocutor.

On the 26th January 1777, "The Lords altered."

Act. Ilay Campbell. *Alt.* B. W. M'Leod.

Diss. Gardenston, Kennet, Alva. *Diss.* at second hearing, Elliock, Stonefield, Hailes.

Non liquet, Covington.

1776. *November 27.* JAMES and GEORGE LESLIES *against* Mr GEORGE ABERCROMBIE.

HUSBAND AND WIFE.

A minister's bond to the widow's fund and his arrears of taxes not deducted from the goods in communion in an accounting with his wife's nearest kin.

[*Faculty Collection, VII. p.* 304; *Dict., App. I., Husb. and Wife, No.* 3.]

MONBODDO. From the nature and constitution of the debt, the bond did not bear interest to the wife or to her husband; and therefore I would adhere.

COVINGTON. If the petitioner, Mr Abercrombie, prevails, he cuts down the branch on which he stands; for he has taken one part of the debt, *jure mariti*. How can he hold that part, if he will not allow the *jus relictæ* to take place as to the other?

KAIMES. Here is a conditional debt, which therefore would fall to the husband's heir, and yet it does not fall under the *jus mariti*. This is singular, yet still I think the interlocutor right.

GARDENSTON. As to the general point, the Ordinary has found, upon clear principles, that what was vested in the son fell to the father, that is, *corpora mobilium*, but he has not found so as to *nomina debitorum*. Perhaps this may be disputed. The Court has gone so far as to find that possession is sufficient; that confirmation, even of the smallest particle, is sufficient to give a title. Why not find so as to the possession of bonds and bills?

HAILES. Why not go one step farther, and abolish the jurisdiction of commissaries in the matter of confirmation?

COVINGTON. The Court has gone far enough already: The farthest was in the case of *Pringle* and *Veitch;* but there the nearest in kin was himself the