KAIMES. Thompson is certainly preferable to all the world; but I would not allow him to operate payment to the prejudice of any creditor rather than another.

COVINGTON. The right of terce is ancient in our law, and its extent limited. The tercer may enter into possession at her own risk: if the rents fall short, she has no recourse. The death of the husband is the term of the commencement of the right of terce: this right hurts not creditors, because whoever lends his money, knows that he lends it with the risk of the terce. Nothing can impair the terce but an infeftment denuding. It is not in the option of creditors to enlarge or diminish the right of terce. Thompson's right is a right in security only; the husband could not give him a power to disappoint the right of terce.

MONBODDO. I approve of Lord Covington's principles: If Thompson was to possess for payment of principal as well as interest, the widow would be secluded from her terce altogether. I do not think that a catholic creditor can draw emulously to the hurt of others. He must draw rateably and proportionally.

On the 30th June 1779, "The Lords found that the widow is not entitled to the terce of the coal; that she has right to her terce of lands out of the rent current at the husband's death, and in time coming; that half of Thompson's interest must be drawn out of the rent of the coal and half of the rent of the lands, and that the widow must draw her terce from the remainder of the rent of the lands."

Act. T. Swinton. *Alt.* A. Elphinston.

1779. *July* 14. MARY BAIRD *against* LADY DON.

MASTER AND SERVANT.

Omission to give Warning.

[*Faculty Collection, VIII.* 165; *Dictionary*, 9182.]

HAILES. It is plain that Lady Don did not call for the inventories and dismiss her housekeeper till after the term. This is certainly irregular: it is said that servants sometimes leave their masters at the term without giving any warning, and that the masters do not bring any action against such servants, either for damages or to oblige them to fulfil their service. The observation is true, but the inference is not just; servants who so conduct themselves are not worthy of their masters giving themselves any trouble about them, and the masters are in general well rid of them.

GARDENSTON. Lady Don gave no warning till after the term, and therefore wages and damages are due. What is there that should hinder this? "That she went away pleasantly." The contrary is proved, "that she gave up her

inventories." How could she do otherwise? "That Lady Don gave her 12s. for a ticket in the stage-coach." This is admitted to be a favour, and it may impute in the question as to *quantum* of damages.

COVINGTON. If a master may turn off a servant in this precipitate manner, without cause and without warning, so also may a servant leave his master without warning. This would be exceedingly inconvenient. When a tenant is obliged to remove without warning, it has been found that the master, although not bound to give a regular warning, was bound to make notification to the tenant.

PRESIDENT. Notice is absolutely necessary on the part both of master and servant: without it there is tacit relocation. Were it otherwise, the consequences would be ruinous, especially to servants.

On the 14th July 1779, "The Lords found the pursuer entitled to L.5 as a half-year's wages; to L.6: 6s. as board wages, and to expenses of process;" altering Lord Monboddo's interlocutor.

Act. R. Corbet. *Alt.* P. Murray, Ilay Campbell.

1779. *July* 29. CHARLES MAITLAND *against* JOHN NEILSON.

LOCUS PŒNITENTIÆ.

Neilson, by a missive, not holograph, became bound to enter into a Tack with Maitland, containing all the usual clauses; and a counter missive, agreeing to that proposal, was signed by Maitland, though not holograph of him. A scroll of the Lease was made out, but they differed on some articles, and Maitland did not obtain possession. In a pursuit against Neilson by Maitland, to implement and sign the Tack, the Lords held the missive not probative, though Maitland acknowledged his subscription; and found that, as it was covenanted there should be a Tack in writing, there was still a *Locus Pœnitentiæ.*

[*Fol. Dict. III.* 395; *Dict.* 8459.]

BRAXFIELD. The writing by which this bargain is constituted is informal: the subscription is not denied; but that is not enough in *this* case. It *is* enough when writing is only necessary *in modum probationis,* but not so when writing is necessary to the constitution of the obligation. *Here* there is a tack for a number of years:—a tack for more than one year is not valid without writing. It is said, "I must at least have a tack for one year." The answer is, "No: for it was specially covenanted that there should be writing; and until writing was adhibited, the bargain remained incomplete."

COVINGTON. A tack for one year was contrary to the intention of both parties: the ground was waste, and therefore no profit could have arisen from one year's possession.

KAIMES. Where there is an express agreement to reduce a bargain into writing, the bargain is not completed until a formal writing is made out.