against an arresting creditor as against the debtor. Insolvency, even known to the person purchasing, is not sufficient to void the bargain.

JUSTICE-CLERK. In this case, as in most others, any difference of opinion among the judges is rather as to evidence than as to law. Vallance, in the sense of all writers on trade, *cessit foro* when he left Glasgow in a clandestine manner. *There* the principle, *infra biduum vel triduum*, prevails; which was established in *Cave's* case. There was fraud in making so large a purchase under false pretences. The goods are still to be considered as in the hands of the purchaser. Mr Shepherd has them sequestrated: this is agreeable to law. Favour is due to this principle, that a seller shall have a *retractus* on his own goods when the price is not paid. It is the duty of the Court to protect the *generous trader* from the frauds of little designing purchasers.

KENNET. Insolvency, knowledge of insolvency, and also a certainty in the purchaser's own opinion, that he could not proceed in business, all concurred here. In the case of *Scrymgeour* against *Mitchell*, it was not proved that Scrymgeour could not proceed in business.

On the 21st June 1775, "the Lords preferred Shepherd the seller."

Act. Ilay Campbell, G. Wallace. *Alt.* A. Abercrombie, H. Dundas.

Reporter, Alva.

1775. *June 27.* SUSANNA JACK *against* WILLIAM COPLAND of Collieston.

PRESUMPTION—PROOF.

An admission of intercourse with a woman upwards of eleven lunar months previous to her being delivered of a child, found not sufficient proof that the party making the admission was the father of the child.

THE pursuer, a domestic servant of the defender, was delivered of a child on 21st November 1773. The defender acknowledged that, during the time she was in his service, he had carnal intercourse with her several times; but he stated that the last of these occasions was on the 28th of November 1772. The pursuer, on the other hand, asserted that the intercourse had continued down till the end of December 1772. In an action for the aliment of the child, the Lord Ordinary "found that there is sufficient evidence, upon the whole, to support the pursuer's claim."

In a petition the defender PLEADED,—That ten months being the longest period during which it was supposed, in law, to be possible that a woman should go with child, there was here no proof of his being the father. *L.* 3, § 11, ff. *De suis et legitim. Hæred.*; Stair, 3. 3. 42. Ersk., p. 108.

ANSWERED,—There is sufficient proof of intercourse about ten months and three weeks before the birth of the child; and that is not so long a period as to render it impossible that the defender should be the father. *Sande Decisiones Frisicæ, lib.* 4, *tit.* 8, *decis.* 10. *Causes Celebres*, 1769.

The following opinions were delivered :—

HAILES. I think that the pursuer has not proved that the defender was the father of the child. The child was born on the 21st November. She says that the last intercourse which she had with the defender was in the end of the December preceding. The defender denies *that*, and says that the last intercourse was on the 28th November preceding. But let the pursuer's own story be held to be the true one, it will not avail her, for it will be observed that this supposes her to have gone just about twelve lunar months. No such latitude is allowed in this country. Two decisions are quoted for her, one from Freisland and another from France. As to the *first*, the case was very particular: it was decided on the confidence that the judges reposed in the chastity of a woman whose character had been blameless; and even in that case it is plain that Sande, who reports it, was of a different opinion. As to the *second* case, from France, it is related in the Supplement of the *Causes Celebres*. If the supplement is of no better authority than the book, it scarcely deserves to be quoted in a court of justice. At any rate the decision is that of a foreign court, which does not bind us in law; and I am sure that it does not bind my conscience, for I think it wrong. But, whatever may be the favour due to married women, there is none such due to the pursuer, who at the best was a kept mistress, and who had lived with another person in that character before she came acquainted with the defender. If a person of that character is to be allowed to go twelve lunar months, the consequences will be very disagreeable; and she who is dismissed may frequently contrive to make the last incumbent pay for the child begotten by his successor.

GARDENSTON. I am afraid that, moved with a sort of displeasure at the manner in which the defender argued, I did not consider the case with sufficient care. I think that the period which I have allowed is too long.

COVINGTON. The interlocutor must be altered, unless the pursuer will prove, by Mr Copland's oath, an intercourse which corresponds with probability.

PRESIDENT. Even in marriage it would be dangerous to allow such latitude to women. A child may be produced to disappoint a collateral. The case, however, is not so narrow here: this pursuer can plead no such privilege.

On the 27th June 1775, "the Lords assoilyied the defender;" altering Lord Gardenston's interlocutor.

Act. J. Boswell. *Alt.* D. Armstrong, R. M'Queen.

1775. *July* 4. JAMES BERRIE *against* The CARRON COMPANY.

BANKRUPT.

Proof of Absconding.

[*Fac. Col. VI.* 92; *Dictionary*, p. 1,110.]

MONBODDO. The Act 1696 is the best of our bankrupt laws, and deserves