

wise in the law of Normandy ; but *that* is not our law, and, I hope, never will. I distinguish between a claim for aliment and a claim for legal provisions.

ROCKVILLE. At first I was afraid that so much could not have been said for the claim as I see there is. Without resorting to old decisions, I go to the case of *M'Culloch*, in 1778, which proceeds on the same principle with this claim.

PRESIDENT. I was not in Court when the decision in the case of *M'Culloch* was pronounced : if it was not an amicable one I should never have given it. I am an old man, and I do not wish to see any alteration of what I was taught in my youth to be law.

On the 15th December 1786, "The Lords repelled the defences, and sustained the claim for an aliment."

Act. R. Cullen. *Alt.* Ilay Campbell.

Diss. Hailes, Justice-Clerk, Swinton, President.

N.B. Some of the judges who carried this question, told me that they did not mean that Mrs M'Laine should have any aliment, in case she married again : if so, they have shown little favour to a handsome young woman of irreproachable character.

1786. December 15. WILLIAM SANDIEMAN and COMPANY *against* THOMAS ADAIR, Factor on the Sequestrated Estate of GAVIN KEMP.

FRAUD—

Of one purchasing goods, knowing himself to be insolvent.

[*Faculty Collection*, IX. 428 ; *Dictionary*, 4,947.]

ESK GROVE. It is too late to alter the rule established in the case of the *Creditors of Cave*. But here is a question of actual fraud, which would be good after *three months* as well as after *three days*. The giving a promissory-note is not inconsistent with the proposal of discounting. Kemp never meant to pay the price.

HAILES. This matter may be simplified in this way : Kemp knew, when he bargained with Sandieman, what we now know, that the goods were to have been received clandestinely, shipped in like manner for America, with the property fictitiously transferred to a bankrupt : supposing Kemp to have premised his commission, with this brief narrative, would Sandieman and Company have trusted him to the value of sixpence ? There is deliberate cool fraud in every step of the business.

BRAXFIELD. Joseph Cave bought the goods *bona fide* : but the Court found that he could not *bona fide* receive them within three days of his bankruptcy. I do not understand this : the maxim, that sales of goods delivered *infra biduum vel triduum* of the bankruptcy are null, proceeds on this principle, that the

buyer, just about becoming bankrupt, knew the situation of his affairs, and so could not purchase what it was to be presumed he could not pay. Had the common creditors of Joseph Cave shown from his books that he was solvent *infra biduum vel triduum*, or a very short space, and that his bankruptcy was occasioned by the loss of ships, the perishing of goods, or emerging cautionary obligations,—I think that the judgment ought to have been different: in other words, that the presumption in such case is *juris*, but, not being *de jure*, may be redargued. I suppose that the *bona fides* of Joseph Cave consisted in this: that he knew not of his being a bankrupt, because he either did not keep regular books or did not consult them on every emergency.

PRESIDENT. In a case like this I should have been very sorry to have seen any difference of opinion. Kemp is a notorious bankrupt, and well merits punishment. I am glad, however, that none of the creditors have brought any complaint. [He ought not to have said so: a judge ought not to be glad to see a guilty man escape by the parsimony of creditors.]

On the 15th December 1786, “The Lords preferred Sandieman and Company to the goods *in medio*.”

Act. Cl. Boswell. Alt. H. Erskine.

Reporter, Rockville.

1787. January 24. Dr JOHN SCOTT, Minister of the Gospel at TWYNHOLM,
Petitioner.

WITNESS—TENOR.

IN a proving of the tenor of a deed, Dr Scott set furth, by petition, that John Brown, in the parish of Monigoff, was a necessary witness; but, as appeared from regular certificates, that through age and infirmities he was unable to appear in Court, as all witnesses in the proving of tenors ought regularly to do; and therefore, the petitioner prayed for a commission in order to his being examined at his place of residence in the country.

On the 24th January 1787, “The Lords, accordingly, granted commission to the Stewart-depute of Kircudbright, and to two Justices of the Peace of the said stewardry.”

For the petitioner, Robert Corbett.