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

the most liberal interpretation, because it tends to introduce a *pari passu* preference. If Wright was once made bankrupt, there is no law which obliged the creditor to make him again bankrupt.

KAIMES. My difficulty is not *there*. But the question is, Whether the execution of search is sufficient to make the debtor a bankrupt? Every word of the execution may be true, yet the man may at that moment have been walking at the cross of Glasgow. When we consider the proof, we see that he was not in Glasgow; but we also see that he had told the very person who had the diligence, that he was to be from home on the Saturday, the day on which the search was made: How can I say that Wright, in such circumstances, absconded?

COVINGTON. This deed falls under the statute 1696. Stevenson, Wright's clerk, says, "that, long before the execution, Wright acknowledged to him that he was harassed by creditors, and would be obliged to leave Glasgow for some time."

[This seems to allude to a more distant period by a year.]

COALSTON. The evidence from the execution is good evidence, *prima facie*, of absconding. Yet still it may be redargued; and I remember, some years ago, a case from Perth, where such evidence was redargued; but there is no such proof here.

PRESIDENT. This is a favourable case, for the creditors only ask a *pari passu* preference. At first sight it may seem odd that the caption was executed, when the person employed to do diligence knew that the debtor was to be from home; but it will be observed that the time pressed, for that was the 58th day after the granting of the deed under challenge, and if the diligence had not been executed then, it could not have been executed till Monday, the very last day on which the debtor could have been rendered bankrupt effectually.

MONBODDO. The Carron Company might have proved that Wright did not abscond; but this they have not done.

On the 4th July 1775, The Lords reduced the deed on the statute 1696; adhering to Lord Monboddo's interlocutor.

Act. W. B. M'Leod. *Alt.* R. Blair.

1775. *July* 18. NEIL CAMPBELL of Dunoon *against* DAVID CAMPBELL of Clochombie.

CAUTIONER.

A distressed cautioner, when coming against his co-cautioner for his share of the debt in which they were jointly bound, found compellable to communicate to him an heritable security upon the debtor's estate, made over to himself by the person who had interposed for the debtor's relief.

[*Faculty Collection, VI.* 349; *Dictionary*, 2132.]

KAIMES. I do not understand any principle of law which makes a society of