

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.