MONBODDO. Had the goods sold to Stein been sold by him to another there would have lain no action. The question is, Did Stein know that his circumstances were irretrievable when he received the goods? The decision in the case of Cave is fifty years old; but it is not the worse of that: it has never been altered. It determined a *præsumptio juris et de jure infra triduum*. But it does not say that there may not be fraud even in older bargains. The sale of the grain was not completed till *fides habita de pretio*, and at that time Stein knew that he could not pay.

ROCKVILLE. No decision has narrowed the ground of the decision in the case of Cave, though many have gone beyond it.

GARDENSTON. The decision was a good one, and has been held to be a rule of law. The question is not with the party contracting, but among creditors who have all been deceived: the parties admit that, before any of the debts in question were contracted, Stein was irrecoverably bankrupt. He must necessarily have known, three days before the *cessio fori*, what was about to happen, and that he could not pay the grain which he bought and received.

DUNSINNAN. The case of Cave was intended for a rule, and it has ever been considered as such; but I do not incline to go beyond it. Actual fraud, at any time, may be proved. If I could see circumstances to convince me that Stein knew he could not stand, I should go back beyond the three days, in a question with Stein himself; but, in a question among creditors, I cannot go back any farther.

PRESIDENT. In the case of *Pallet*, in 1680, the Court thought that the books of a merchant, showing that the person purchasing could not have paid, was sufficient to establish *dole*. But that decision has not been repeated; for the law must follow the stream of manners: and, in the case of Cave, the Lords laid aside the point of insolvency, and adopted another principle, which might not be arbitrary. I still admit that a special act of fraud, even before the three days, would void the sale.

On the 4th December 1788, "The Lords sustained the claim for the redelivery of the grain, delivered within three days of the 23d February, when the *cessio fori* happened.

*Act.* Mat. Ross. *Alt.* Allan M'Conochie, &c.

*Diss.* Henderland.

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1788. *December* 16. MADELAINE DE LA MOTTE *against* WILLIAM JARDINE.

## ALIMENT—HUSBAND AND WIFE.

**A Wife divorced brought a reduction of the decree. She was found entitled to the expense of carrying on the reduction, and to aliment during the dependence of it; and this decreed after the reasons of reduction had been repelled.**

[*Faculty Collection, X.* 109; *Dictionary,* 447.]

JUSTICE-CLERK. After a decreet of the consistorial court the woman is no

longer a wife. She may re-establish her *status* by a reduction or declarator of marriage. Suppose the pursuer M. de la Motte were not to enter her appeal to the House of Lords till the fourth year after sentence, that appeal would place her just as if she were in a reduction. By her argument she might claim aliment *retro*, and then, having obtained it, she might drop her appeal.

HENDERLAND. I never heard of any demand for aliment or expenses in a case like this. Final sentence in the Act of Parliament means the final sentence of the consistorial court.

GARDENSTON. Nothing is so apt to puzzle as the putting of cases. As long as the lady acquiesces she has no claim. When she brings an appeal it will be considered how far she has been *in mora*: should the cause be appealed after four years, that *mora* may perhaps exclude aliment.

DREGHORN. If a wife be entitled to money here, after she ceases to be a wife, she may have the like demand in the House of Lords. This is very inexpedient: few men could afford, on those terms, to sue for a divorce. The expense would be dreadful: even at present, from judicial proceedings much money is bestowed in the Commissary Court. [He expressed himself too strongly; I set down his corrected opinion.] A woman has, at the worst, a relief here and elsewhere *in forma pauperis*. I do not mean to bind myself down never to allow any thing to a divorced woman. But I think that here there was no *bona fides* in attempting to set aside the judgment of the consistorial court. During a practice of thirty years I have never seen an unjust prosecution against a woman in the Commissary Court.

ESKGROVE. The maxim, *res judicata pro veritate habetur*, does not apply to a reduction of the decreet of an inferior court. That decreet is no more than a summons. Till the decreet of this court is pronounced there is a *lis pendens*.

On the 16th December 1788, "The Lords found the petitioner entitled to aliment and expenses;" altering their interlocutor of 8th August 1788.

*Act.* W. Stewart. *Alt.* R. Blair.

*Diss.* Justice-Clerk, Swinton, Henderland, Stonefield, Hailes, Dreghorn.

*Alt.* Alva, Gardenston, Rockville, Monboddo, Ankerville, Eskgrove, President; [carried by his casting vote.]

*Non liquet*, Dunsinnan.

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1789. *February* 3. WILLIAM RIDLEY *against* TRUSTEES of HAIG and COMPANY.

## PRIVILEGED DEBT.

**Wages, or a yearly salary to the overseer of an extensive distillery, found not a privileged debt.**

[*Faculty Collection, X.* 101; *Dictionary*, 11,854.]

GARDENSTON. The principle is just, that privileges are not to be extended.