reckoning proceeds,) he cannot count for them here in this place. *2do*, The creditors have no right to them, who stand only infeft in the maynes, and thir were never a part of the maynes. We had the Lords' answer on this also, and they found he could not count for them here; that which moved the Lords was the favourableness of the cause, being a tenant who had *bona fide* paid it already, though not warrantably, and to the right person, for double payment is most odious in law.

Then it was controverted anent the prices of victual these years for which he was to count; and my Lord declared he must count conform to the middle fiars of Hadington, and not conform to the highest, as Smeton pressed, though for some of it he might have got a greater price. See my informations of this cause.

Advocates' MS. No. 150, *folio* 92.

1671. *February* 23. His PARISHIONERS *against* REV. ARCHIBALD MACKINLA.

ONE Mr. Archibald Mackinla being pursued by his parishioners upon the act of Parliament, ordaining the parish to make the minister's manse sufficient to him at his entry, but appointing the incumbent to keep it up on his own charges and to leave it in as good condition as when he found it, and in case he neglect, ordaining action to be sustained against him, his heirs or executors, for refunding the damage, which, upon visitation, it shall be found to have received during his incumbency; Parl. 1612, cap. 8, *ibique* Paponius; act 20, *anno* 1663: but they subsumed he had deteriorated the said manse in the sum of 300 merks, which was made appear by cognition taken of it both at his entry and at his departure, finding it damnified in the said sum: *item* they pursued him both to pay them this 300 merks, as also to restore them their mortcloth which he had taken away with him at his departure. ANSWERED,—They were only disaffected persons, he being a loyal conformist minister.

The Lord Advocate found the summons relevant, only in case they succumbed in the probation that they deserved a very sharp censure.

Advocates' MS. No. 151, *folio* 92.

1671. *February* 23. The SCHOOLMASTER of Drone *against* some HERITORS in Dumbarnie.

THE Schoolmaster of Drone pursuing some heritors in Dumbarnie to pay their proportion of the stipend contained in the stent roll; ALLEGED,—They paid that proportion he charged for to another schoolmaster, and so could not also pay to him. ANSWERED,—That by acts of Presbytery they were disjoined from that place to which they alleged they paid that stipend, and annexed to Drone. REPLIED,—This disjunction and dememberation is only *quoad officium* but not *quoad*

beneficium. DUPLIED,—*Qui habet incommodum,* viz. the pains, *debet et habere commodum.*

My Lord Advocate found the letters orderly proceeded; only ordained them to have suspension upon the two Schoolmasters' competition, without caution or consignation.

Advocates' MS. No. 152, *folio* 92.

1670. *June* 14. BYRES, &c. *against* The BAILIES of Hamilton.

LYLL, bankrupt, after he has disappeared, having made a disposition of his whole goods and Merchant ware to some of his creditors, those who were prejudged thereby made their application to the bailies of Hamilton, (in which burgh the said bankrupt had his house and shop,) entreating them, notwithstanding of the said disposition and instruments of possession taken thereon, to secure and sequestrate the said bankrupt's goods till such time as they might see who had best right thereto; which the bailies thinking they might warrantably do, they caused nail some plates of iron on the bankrupt's door. Upon fact they are convened by the creditors, in whose favours the disposition was made, to re-deliver the goods or prices thereof, with 1000 merks, wherein they were damnified by the bailies their impeding them to take possession of these goods, and so to perfect their disposition. The first calling we did cast, in regard there was no inventory produced, conform to which though they libel.

At the next calling I alleged no process while the bonds for which the said disposition was granted, and to which it relates were produced. This was repelled. Then we proponed a formal defence, that this being a disposition made by a bankrupt after he had fled, gratifying some of his creditors *in fraudem* of others his just and lawful creditors, the same was *ipso jure* null, by way of exception or reply, as the very act of Parliament 1621 bears; especially thir pursuers having been upon the contrivance of the said disposition with the bankrupt, (for the which we craved their oaths of calumny,) and so can never furnish them an active title to pursue on.

This my Lord Newbayth repelled, because there was no reduction at any other creditor's instance, and that it was not competent to the bailies. And for the act of Parliament, he answered, the same appoints many things to be received by way of exception, to which the Lords require a reduction: Sir J. Harper offered to produce practiques where the Lords had found such dispositions by way of reply null, which he was ordained to do.

Then we ALLEGED,—That the bailies had done nothing in this case but what *ratione officii* they were bound to do, the creditors prejudged having made their address to them. The Lord Newbayth found, though the same might have been lawfully done by magistrates of a burgh royal, yet he found it unlawful in bailies of a burgh of regality as Hamilton was; notwithstanding it was pressed by Sir John, that the disponer being bankrupt and *in fuga,* (as it would have been lawful to any creditor to have arrested at his own hand the person of any such bankrupt, being his debtor,) so it was most warrantable for the bailies to seques-