

1671. *November 18.* Anent PAYMENTS to BANKRUPTS.

*Queritur*, If a man may lawfully pay a sum owing by him to a bankrupt, after he knows the man to be bankrupt. If he have a decreet of *bonorum*, and so has disposed all his goods to his creditors; or if any creditor has arrested it, then it is out of all doubt he cannot safely pay it to the debtor; but the question is, where there is nothing of that. In which case I think he may.

*Advocates' MS. No. 263, folio 114.*

1671. *November 18.* Anent BONA FIDE POSSESSION.

WHERE a man possesses by a coloured title, whereof reduction is raised at the instance of one who has a better right, yet he retains possession ay till sentence; *queritur*, if he be obliged to restore the fruits consumed by him between the citation and the sentence, if *fructus perceptos facit suos usque ad sententiam*. I think not, for though the citation puts him *in mala fide* to dispoise and alienate *rem litigiosam*, yet it puts him not *in mala fide* to possess ay and while your right be found better; seeing *dubius est eventus litis*, and till I see your right I think my own good. See *Mackenzie's Observations on the act of Parliament 1621, page 137.*

*Advocates' MS. No. 264, folio 114.*

1671. *February 21, and November 21.* CORBET against ANNA MEINZIES, Relict of MAXWELL of WRAES.

*February 21.*—A woman pursuing upon her liferent infestment, it was ALLEGED,—That the same could not be respected; because, by a clause in the contract of marriage, (which was the ground and warrant of her infestment,) it was expressly provided that she should have no right to her liferent till L.1000 promitted in name of tocher were paid.

To which it was ANSWERED,—That this would have met the woman well, if she had been the party binder and contractor for her tocher; but *ita est*, it is not she but her brother that becomes obliged for the same; and it were a very hard and unreasonable thing to defraud a woman of her liferent, because through your own default ye have not recovered the tocher; let her have her liferent, and pursue ye as accords.

My Lord Advocate would admit her infestment, notwithstanding of the said quality in the contract matrimonial; unless the defender would say that, *per eum non stetit* the tocher is not paid, and that he has used diligence for recovering the same, and yet cannot get it.

*Advocates' MS. No. 135, folio 90.*