JUSTICE-CLERK. I think that actual payments are rightly found not to come within the statute: the contrary doctrine would be fatal to commerce. No man has his estate in ready money laying by him. There is no danger in suffering a man to pay his just debts, in so far as he has money by him; but the law does not suffer him to touch upon his securities. The line therefore is well drawn by our decisions, and I will keep strictly to it. The case of draughts on the bank does not apply: *there* the holder of the draught gives up his voucher of debt; *here* the bill was not given *in solutum*, but as a security, no matter how short the security was to last.

KENNET. This was no ready money payment: the receipt given by Angus is sufficient to fix my opinion. Angus gives a receipt for two bills, one of them at a distant day of payment, and far exceeding the sum due to him.

PRESIDENT. I do not think that depositation of a *nomen* is effectual by the law of Scotland, nor that an actual payment falls under the Act, nor that a draught on the bank or on a factor falls under the Act, for that such draught is supposed to be payment. This case however falls under the Act, for a security was meant.

On the 17th July 1771, "the Lords sustained the reason of reduction founded on the Act 1696;" altering Lord Elliock's interlocutor.

Act. Ilay Campbell, A. Lockhart. *Alt.* R. Blair, R. M'Queen.

Diss. Kaimes.

1771. *July* 18. WILLIAM TOSHACK *against* ALEXANDER SMART.

PUBLIC OFFICER.

Statute 1696, cap. 26.—In the election of a Parochial Schoolmaster, Heritors who, by their title-deeds, are liable in payment of cess and parish burdens, have a title to vote, whether their lands stand separately valued on the cess-roll or not. The liferenter, in the right of voting, preferred to the fiar.

[*Fac. Coll. V.* 286; *Dictionary*, 13,134.]

AUCHINLECK. It is a strange idea that no man can have a vote in the election of a schoolmaster unless his valuation is separate in the cess-books. In the choice of a member of Parliament, a certain valuation is required to entitle a man to a vote. In the division of commonties, it is necessary to know the valuation, in order to ascertain the portion to be allotted to every one having interest: *here* it is admitted, that the voters are heritors, and that they paid cess. No more is required.

KENNET. The rule is well laid down in the case of *Kirriemuir*.

COALSTON. I even think that the same ought to be the determination, although the authors of the parties had been bound to relieve them of the cess. All are entitled to vote who have a valued rent.

AUCHINLECK. All small heritors, just as mites in a cheese, are our fellow-creatures.

On the 18th July 1771, "The Lords found, that every heritor or proprietor of lands and houses in the parish of West Kirk, who, by his title-deeds, is liable in payment of cess and parish burdens, has a title to vote in the election of a schoolmaster of said parish, whether such heritor's lands stand separately valued on the cess-roll or not: Found that, in the case of a liferenter or fiar, the liferenter has a right to vote on the liferented subjects, and not the fiar;" adhering to Lord Monboddo's interlocutor.

Act. A. Belches. *Alt.* J. M'Laurin.

1771. *June 15.* JAMES BREMNER *against* LIEUTENANT-COLONEL JAMES SINCLAIR.

BONA ET MALA FIDES.

Money found in the Repositories of a Factor. *Bona fide* intromission therewith. It gives a legal title of competition with Creditors.

[*Faculty Collection, V. p. 263; Dict. App. I.; Bona et Mala Fides, No. 2.*]

PITFOUR. Whenever my money is in my factor's hands, if I can prove the identity, I am entitled to retain it. So it was determined in a late case of *Ruthven's Creditors.*

KENNET. In that case the identity was proved; not so here.

PRESIDENT. There may be cases where money may be detained as the property of the master; as when a factor, just after receiving a certain sum, breaks his neck by a fall, and has that precise sum in his pocket: but here there is not sufficient evidence that the money detained by Colonel Sinclair was the money received by the factor in payment of the rents.

KAIMES. Colonel Sinclair possesses the money *bona fide*: ought he not to be allowed to retain it, in so far as to create a *pari passu* preference?

JUSTICE-CLERK. Colonel Sinclair acted *bona fide*, and intromitted with the money at the sight of the nearest of kin.

On the 13th June 1771, "The Lords, in respect that the money intromitted with is not proved to have been the rents received by Ross, found that Colonel Sinclair has no right of retention, further than to so much as extends to a proportional share with the executor-creditor;" varying Lord Gardenston's interlocutor.

Act. G. Wallace. *Alt.* W. Mackenzie.

Diss. As to any retention at all, Barjarg, Elliock, Stonefield, Hailes, and Monboddo.

1771. *July* 18.—COALSTON. There is a distinction between money-rent and victual-rent. Victual in my girnal, whereof my factor has the key, is mine: