

## BONA FIDE PAYMENT.

### SECT. I.

#### Payment of Rent by Tenants.

1555. May 14. ABBOT OF BALMERINOCHE *against* GRANGE-DURHAM.

ANENT the action pursued by the Abbot of Balmerinoch against Durham of the Grange, for the mails of a fishing certain years bygone, it was *alleged* by the said Durham, That he was but a subtenant, and had the said fishing of John Lesly, who was principal tenant to the said Abbot, and he paid his mails to the said John, of whom he had the same in *bona fide*; and so the said Abbot has no action against him: The which exception was admitted by the LORDS, and absolvitor given to the said Durham against the said Abbot.—Then it was *alleged* by the said Abbot, That the said John was at the slaughter of the Cardinal, who was cancelled and forfeited for the said cause; so that the said Durham was in *mala fide*, and should not have given his mail to the said John, after the committing of the said crime.—It was *alleged* by the said Durham, That he did no wrong in giving of his mail to the said John, any time before the sentence and declaration in Parliament of the forfeiture: Which was admitted, and absolvitor given from the petition of the said Abbot.

*Fol. Dic. v. 1. p. 111. Maitland, MS. p. 21.*

1622. December 14.

VISCOUNT ANNAND *against* TENANTS of Eiliston and Scot.

THE Viscount Annand, donatar to the non-entries of certain lands which pertained to umquhile Seot of Boniton, pursued the tenants of the lands decerned in non-entries, by a summons intented in March 1612, and obtained decret, and thereafter charged the tenants to pay the Whitsunday's mails last bypast.—They *excepted*, That they could not be debtors for any term preceding the declarator, but had paid the mails *bona fide* to their preceding master.—It was *answered*, That they were in *mala fide* to pay after the intenting of his cause; but should have raised double pouding, wherein he would have been preferred in respect of his decret: Which reply the LORDS found relevant.

*Fol. Dic. v. 1. p. 112. Haddington, MS. No 2701.*

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No 1.

Found that a tenant was in *bona fide* to pay his mail to his master, although it was not our that the master was guilty of high treason; but the process was only in dependence in Parliament, and no sentence of forfeiture had been pronounced.

No 2.

Tenants are not in *bona fide* to pay their duties to their master, who is in non-entry, after the action of non-entry intented against them. They ought to raise a multiple pouding.