or as a step and connexion in Hugh Keith's progress: An original right it cannot be, in regard it bears expressly to be granted by the Earl as superior only; neither does it appear that the property was any wise returned or consolidated with the superiority. As an intervening connecting step in the conveyances it is as little; because Hugh's and Nathaniel's, to which it is relative, are not produed; *et sic non creditur referenti nisi constet de relato.*

DUPLIED for Ludquhairn,---That a *talis qualis possessio* satisfies the Act of Parliament 1594; and it is evidently proven, that either Hugh Keith himself, or one Denoon, an appriser from him, possessed all that time; and Elizabeth's right designs the lands as possessed by these two. And as to Dirren's quarrelling Ludquhairn's infeftment in 1665, it is *jus tertii* to him, his own right being defective: seeing it bears Elizabeth, his author, was interdicted to Sinclair of Brim, and others; whereas, only Brim consents, albeit the word *others*, being plural, imports there has been at least three interdictors; and, so the plurality not subscribing with her, the right is null, and that this is *jus tertii.* See *19th November* 1624, *Laird of Lag* against *Tenants;* *16th June* 1665; and *23d December* 1668.

The Lords having considered this case, on the Lord Tillicoultry's report, they thought both the progresses lame and defective; and Dirren founding on a possessory judgment, the Lords repelled it *in hoc statu processus*, it not being proponed in the Act. And, before answer to the nullity of the seasine for want of registration, they ordained trial to be made in the particular register of Inverness, if, about the year 1620, the seasines of the lands in Caithness used to be registrate there; and, likewise, the general register at Edinburgh serving for the whole kingdom, if at that time any Caithness seasines can be found inserted there. And, as to the forty years' possession required by the Act of Parliament 1594, resolved to hear them farther, if it must be a peaceable plenary possession, or if a *talis qualis* be sufficient; or if it was competent to Dirren, the defender, unless he were in possession himself. *Vol. II. Page* 170.

1703. *January 5.* JAMES FERGUSON *against* WALTER WELSH and WILLIAM DOUGLAS.

JAMES Ferguson, being employed by the manufactories to prosecute the execution of the laws against export, pursues Walter Welsh and William Douglas, merchants in Dalkeith, for shipping aboard fifty-two packs of wool to be transported abroad, contrary to the Acts of Parliament in 1701, before the water-bailie of Leith, as having an admiralty jurisdiction, and there obtains a decreet, confiscating the goods and fining them; whereof they raise reduction and suspension, on sundry nullities: And the affair coming to be debated as if they were *in libello*, the manufactories insisted on thir grounds, That they were known to be notour exporters of wool, and that they stealed it into the ship in the night-time; that they covered up all the packs with coals above them, that the wool might not be seen; that there was no charter-party: and the skipper and crew, being examined, confessed that they had got a permit, in case of their being challenged, to say they were only going with it to Aberdeen; but if they happened not to be questioned, then they were to transport it abroad over seas.

ANSWERED,—Thir were but presumptions to infer simulation, but were not of that pregnancy to canvel the truth; which was, that the ship was truly freighted for Aberdeen, as the permit bears; and there was no clandestinity in shipping it, for it was done as the tide offered; and the coals were thrown above them only to serve for ballast; and the crew were most unwarrantably examined, it being only probable *scripto vel juramento;* and that, last of all, they proponed this unanswerable defence before the water-bailie, That it was English wool, and so, by the Act 1701, might be lawfully exported,---the restraint and prohibition of it only lasting till the next session of Parliament, and so expired in June last, when the Parliament sat down; and yet the bailie most iniquously repelled this.

REPLIED,—The permit was a mere blind and sham to palliate the simulation and fraud in case they were quarrelled; and there were fifty-one stones of wool more than were mentioned in the permit; and if they were truly bound for Aberdeen, *quorsum* did they send forty dozen of stockings there, which is the staple port of that sort of ware? and yet they had that quantity of stockings aboard. And as to the defence of its being English wool, that was kept up to the very last, and a poor invention; if it was so, why did they not redeem their great expense and trouble by proponing it first?---But as it is not true, so it is nowise relevant: For, 1*mo*, By the laws preceding 1701, the exportation of all wool stands prohibited; as appears by the Act 113, Parl. 1581, and Act 40, 1661, ---the words being impersonal, and *in rem directa, All wool,*—no manner of wool; *et qui omne dicit, nihil excipit:* and these laws, never being rescinded, stand still in force. 2*do*. The restraint on export of English wool, by the Act 1701, being till the next session of Parliament, that term and period is not yet come; seeing the last Parliament was not of an ordinary nature, but met by virtue of the Act 1696, *ad particularem effectum,* to secure the peace of the country, and not to make laws or take off prohibitions; and so is not such a session of Parliament as is meant by the said Act 1701, which must be understood of an ordinary meeting; *nam leges sunt interpretandæ de eo quod plerumque fit, et exceptio casus fortuiti non intelligitur de insolitis;* for a general disposition *non extenditur ad casum de quo disponens verisimiliter non cogitavit, et actus agentium non operantur ultra eorum intentionem;* and a limited cause produces a limited effect. Neither is that held in June 1702 called a session of Parliament, nor had they a committee for trade, but was only an occasional meeting for security of the government on King William's death.

DUPLIED,---A defender may manage his defences as he pleases; yea, *licet reo in se defendendo petere contraria*; and the last Parliament has an express Act, declaring it treason to quarrel it; and, *esto* it were not an ordinary session, yet the defenders were *in bona fide* (though *ignorantia juris non excusat,*) to think the prohibition expired; and any probable ignorance excuses from penalties; as this is.

Yet titubation seems inconsistent with *bona fides,* which must be *ex integra causa.*

The case being very nice, and the decision *in jure* dangerous, the parties at the bar submitted to the Lords as arbiters; and, as a rule in their determination, it was proposed that the confiscation, which was valued to be about £500 or £600 sterling, might be halved and divided, so that the manufactories might have £250 or £300, and the merchants, defenders, the rest; so that they might not be wholly ruined. *Vol. II. Page* 171.