

ty, but has an interest in the ship, (which is our case,) then, in all sense and reason, the ship, at least his part thereof, must stand engaged to the skipper for his freight, and must be interpreted to be *debitum reale*; and so whoever comes in his right thereof, *etsi transierit per mille manus*, must be liable for it.

This was very hotly debated betwixt Sir George Lockhart and Sir John Cunyghame, who was for the reducer.

*Advocates' MS. No. 69, folio 81.*

1670. July 13. LYON of Muresk against ———

IN this cause it was resumed, how oft the Lords have found, that *possessio in mobilibus non solum præsumit sed et dat titulum*; for this was a pursuit at the pursuer's instance, as executor confirmed to ———, against the defender, as he who had intromitted with the moveable goods pertaining to the defunct.

The DEFENCE was,—That he could never be pursued for these goods, because he had acquired them *titulo et jure emptionis* from ———, who possessed the said moveables by the space of thirty years, before the intenting of any action therefore: and it was alleged, that if any creditor to the defunct had poinded them, the defunct's executor could never have repeated the same. *Item*, if my goods be grazing by the space of two or three years with another man, and be poinded upon the ground for that other's debt, there will be no *rei vindicatio* sustained against the poinder, but the owner has his recourse against him to whom he gave them in grazing; and so it was inferred, that possession would give them the same benefit here. ANSWERED,—That no possession can satisfy for giving a right to moveables, unless they possess them by the space of forty years, and so prescribe the same. This went to interlocutor.

Then ALLEGED,—*2do*, No process for the moveable heirship, and for the doors, windows, irongate, and sundry other things fixed in the house, and so *pars soli et ædificii*, and noways moveable nor confirmable, though they have foolishly confirmed the same.

The pursuer restricts his summons to such goods as are truly moveable.

*Act.* Thoires and Cunyghame. *Alt.* Birnie and Wallace.

*Advocates' MS. No. 71, folio 81.*

1670. July 13. DUKE of HAMILTON against The TENANTS of Lesmahago.

THIS was a declarator of the property of the Moor of Dovan, intended by the Duke, against divers gentlemen lying adjacent and contigue to the said moor. ALLEGED for the Laird of Stainebyres, that there can be no process, because there is nothing produced but the Duke's seasine of the barony of Lesmahago, whereof this moor is alleged to be part and pertinent; which being only the as-