Liddell does. Then Cullene dies. Liddell pursues his Lady as executrix to her husband, to pay the price of the ware furnished, conform to her husband's obligatory letter; and recovers decreet. On which he charges the Lady and Sir David, now her husband, *pro interesse;* who suspend on this reason, that the letter, which was the ground of the decreet recovered against her, having miscarried, so that the charger cannot now show the same, they cannot safely pay the sum; seeing in their tutor counts with young Cullene this sum contained in this decreet will not be allowed them, unless they can produce the letter, or say that in the decreet given against the lady, Cullene was also called.

To the which it was ANSWERED,—That the decreet bearing it was given on that letter will be sufficient exoneration to Sir David, and will ever produce allowance to him of that sum, when he comes to count with his pupil; for a decreet bearing the production of a letter, bond, or any other writ, or bearing that it proceeded upon such or such writs, which were seen then by the judge, it is *probatio probata*, though that these writs cannot be now shown.

REPLIED,—That a decreet, except the verifications thereof were assigned to him, will never infer exoneration to Sir David, nor work him relief against Cullene; seeing Cullene will say this decreet is *nihil ad me*, it is *res inter alios acta*, I was not called to it, and so cannot prejudge me, or bind that debt of my father's on me; and, therefore, if Cullene and his tutors will but declare that he shall allow to this suspender the sum contained in the decreet, he will presently make payment of it.

This was found relevant.

Charger, Wallace. *Alt.* Lockhart and Falconer.

Advocates' MS. No. 68, *folio* 80.

1670. *July* 9. SANDILANDS *against* CLERK and WALKER.

THIS was a reduction of a decreet of the admiral, whereby the admiral had decerned this pursuer (as he who had bought the ship,) to pay 500 dollars as the fraught convened upon betwixt the skipper and Sandilands his author, of the ship to the skipper, upon this reason of iniquity, That albeit by the laws and customs of all Admiralty Courts in the world, *omnia invecta in navem* are *tacite* hypothecated to the skipper for his fraught, so that he has *jus retentionis ratione tacitæ istius hypothecæ* of the whole goods fraughted in the ship, that either he may detain them in the ship, or hinder them from being transported off the shore, till such time as he be paid of his fraught; but it is againt all law or reason for any man to think or say that he should have any real right of hypothecation in the ship itself, so that it shall not be leasum to the several owners of the ship to sell their parts of it till the skipper be first satisfied of the fraught, or if they do, that the ship is transmitted with the clog and burden of a hypothec for the fraught.

ANSWERED,—That where the fraughter is a stranger, that has no interest in the ship, in that case indeed the skipper has only an hypothec in the goods that are in the ship, and not at all in the ship itself; but where he is not an extraneous par-

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 fraught, 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, intented 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-