

Balgowny and others proved forty and fifty years' possession : The Town again proved as clearly, That every year they are in use to ride the marches of that muir, and to hound, chase, and drive away all the beasts they find upon it, except their own.

Against the Town's interruptions, it was OBJECTED ; *1mo.* They were only proven by their own burgesses, who were parties interested, and could tine and win in the cause ; *2do,* Their title was as proprietors of the muir ; and that not being proven, their interruptions wanted a warrant, and so were illegal ; *3tio,* Such a tumultuary cavalcade of driving away all the cattle they met that day in the muir, is but a mockery, and cannot interrupt Balgowny's prescribed possession, unless they can particularly condescend and prove that some of the goods then driven off were his ; for, what if he had none that day in the muir ?

ANSWERED,—The parties in this process were the Magistrates, and none of them were adduced as witnesses ; and it was undeniable but burgesses were habile witnesses *in causa communitatis*, else it were impossible to get such matters of fact proven. To the *second*,—One who interrupts is not obliged to bring his title with him ; and if he proceed on a wrong mistaken right, yet, if he have another real title in his person, such as a right of servitude or pasturage, the interruption stands good, and may be ascribed to either. And for the *third*,—*Qui omne dicit is nihil excipit* : He who drove all but his own, must be understood to do it *ex animo* to interrupt the possession of all other pretenders, whether their goods be there at the time or not.

The Lords repelled the objections, and found the interruption proven, without burdening the Town to prove that Balgowny and the other vassals' goods were specially there at the time, and driven off the muir ; or that the peats cutted and carried away belonged to them, and were casten by them particularly.

See Stair, *14th November 1662, Nicolson* ; and *21st June 1667, Watson* ; for as *res sua nemini servit*, so that maxim, *unaquæque gleba* is affected with the servitude, must be understood *civiliter*, and not strictly *et judaice*.

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1704. *November 28.* WILLIAM LAUDER OF WINEPARK *against* HIS LAWYERS.

WILLIAM Lauder of Winepark gave in a bill, representing, That, in the suspension he had depending, against the Earl of Lauderdale, about the charter of his lands, his advocates declined to appear for him ; therefore craved the Lords would appoint them to plead his cause.

The Lords considered that lawyers could not be forced to manage a cause, if they truly thought it unjust ; according to Accursius his lines, cited in our 125th Act of Parliament 1429, *ILLUD JURETUR QUOD LIS SIBI JUSTA VIDETUR* ; but they not only behoved to give their oath of calumny on it, but also might be obliged to propone defences *in jure*, leaving their import to the Lords.

It was remembered, that, in King Charles I.'s reign, Bastwick and Prinne being convened in the Star-chamber, for slanderous pamphlets against Doctor Laud, Archbishop of Canterbury, the English historians blame some of their lawyers for deserting them after they had engaged, being afraid of the Archbishop's power and displeasure.

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