No 91. It is true, that, in those cases, the apparent heir had, before the competition, completed his own right by service and infeftment. But that circumstance, of which no notice is taken in the statute, does not seem to make any difference. An infeftment was, with propriety, required at the commencement of the prescription, it being necessary to show clearly that the party intended to hold the subject as his own; but after he had, in that manner, published what his purpose was, no reason can be given why the possession of his heir, which can only be ascribed to the same title, should not have the same effect as if he himself had survived the whole space of 40 years. The right of possessing the land estate held by the ancestor, which is one of the privileges of apparency, would otherwise be a snare to those in whose favour it was introduced.

Indeed, it does not appear why the apparent heir may not, at any time, by service, remove such an objection as the present; the rule, *Quod pendente lite nil innovandum*, being applicable only to rights acquired during the litigation from third parties, and not to any thing which one of the litigants may do, by exercising powers that are solely vested in himself; 12th July 1785, Massey *contra* Smith, No 73. p. 8377.

The question was reported on memorials, when

The Lords unanimously "sustained the defences."

Reporter, *Lord Stonefield.* Act. *Dalzel.* Alt. *Sir William Miller.* Clerk, *Sinclair.*

C. *Fol. Dic. v. 4. p. 94. Fac. Col. No 162. p. 325.*

SECT. III.

Title by Sasine upon Hasp and Staple.

1697. *June* 10.

Administrators of Heriot's Hospital *against* Hepburn.

No 92. Sasine upon hasp and staple having no other warrant but the clerk of the burgh's assertion, is not a sufficient title for prescription, as not contained in the act of Parliament 1617, which mentions sasines upon retours, charters, and precepts of *clare constat*, but no word of hasp and staple; so that acts of Parliament being *strictissimi juris*, are not to be extended, and these being omitted, it must be presumed to be *casus de industria omissus*, and not *per incuriam*.

Fol. Dic. v. 2. p. 104. Fountainhall.

*** This case, (which is in opposition to the case which follows,) is No 82. p. 10786.