

as no man will say but Mr. Campbell might pass from a perfected minute, by a line under his hand, in favours of a third party. It alters not the case, that the letter is directed to Sir Alexander, and not to the Dutchess; for a clause in a writ conceived in favours of an absent third party, is as much their right as if they were present. And Mr. Campbell's letter doth not appear to have been so overly writ as he now pretends; seeing he is careful that his yielding the bargain to her Grace should not be for nothing, but for a consideration, which implies something of more caution and deliberation than his new gloss will admit of.

The Lords found Daniel Campbell's letter did not oblige him to let the Dutchess have the bargain.

Page 99.

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1706. June 19. JOHN BINNING of Drumcourse *against* The WOOLLEN MANUFACTORY of Newmills, and the PROCURATOR-FISCAL of the Sheriff-Court of Linlithgow.

IN the process at the instance of John Binning of Drumcourse, against the Woollen Manufactory of Newmills, for reducing the Sheriff-depute of Linlithgow's decret, confiscating some packs of wool belonging to John Binning, because of pregnant presumptions of a designed exportation, and his being holden as confest for declining to purge himself by oath,—the Lords reponed him to his oath; and upon his deponing that he had no formed design to export the wool, reduced the Sheriff's decret. Whereupon the pursuer urged for restitution of the wool confiscated, and damages, from the masters of the manufactory who seized the wool, and the Sheriff's procurator-fiscal, who roused and disposed thereof.

ANSWERED for the defenders,—All persons, by the Act of Parliament, being encouraged to discover exporters of wool, and to pursue the confiscation, and to have the two part for their reward, and the procurator-fiscal the third; and the defenders having, upon the faith of the sentence of confiscation, *bona fide* consumed what they acquired thereby, they cannot be liable in repetition of the wool confiscated, as being the fruits and perquisites of their office *bona fide percepti et consumpti*; and, at the furthest, could be only liable *in quantum locupletiores facti*, for the price they truly got for the wool, deducing the charges of the rous, and all their other expenses.

REPLIED for the pursuer,—The sentence of confiscation being reduced, restitution follows as a natural consequence. And though, in some cases, it may be contended that *fructus lucrantur*, by being *bona fide consumpti*, it was never imagined that the stock should follow the same fate.

The Lords found the defenders liable in repetition of the wool at the prime cost, deducing the expenses of the rous; and assoilyied from damages.

Page 108.