their uplifting a part presumes their intromission with the whole, unless they tell who got the rest, seeing no other had a title to uplift but they.

Replied,—Their case was carefully to be distinguished from the donatar's; for they were assignees for an onerous cause, and now, after twenty years, could not give that satisfaction demanded, but were willing to count to the utmost penny received; and no rigour of law can seek more. And where the Act speaks of counting for intromissions, it must be understood of actual intromissions, that being the genuine grammatical sense of the word, and not to be strained to remote consequences.

The Lords thought the case new, and would not summarily determine it on the debate, but ordained the parties to inform. *Vol. II. Page* 693.

1711. *December* 27. Robert Stewart and Others *against* Captain William Collyar.

Robert Stewart and other merchants in Aberdeen having fitted out the ship called the Virginia, with a cargo of Scots manufactories for the West Indies; about the Orkney isles she is attacked by a French privateer called the Pontchatrain, and taken; but the merchants ransoming her for 200 guineas, yet the pirate took out a great deal of her loading into his own ship before he restored her. A few days after this, Captain William Collyar, commander of one of the Queen's men of war, called the Mermaid, rencountered the privateer, and took him, and got him adjudged lawful prize: and, dividing the goods, he got 3-8th parts for his share, conform to the maritime custom. Stewart and his partners, owners of the ship out of which these goods were taken, pursues Collyar as intromitter therewith, when he took the privateer: and he having failed to find caution *judicio sisti et judicatum solvi*, is decerned by the admiral. Whereof he presents a bill of suspension on thir grounds: That the privateer was a legal prize; and what he found therein, by the rules established by the English Admiralty, belonged to him and his crew; and that their agent, in whose hands their goods were consigned, had put them in the Greyhound, which perished at Newcastle bar; and so he cannot be liable. And this case not being truly maritime, he was not bound to find caution; as the Lords had found, *January* 16*th*, 1636, *Stewart* against *Ged*.

Answered,—The uncontroverted practice of the admiral-court is to put the defenders under caution, founded on this unanswerable reason, that they are generally strangers; and, by withdrawing, would make the process elusory and ineffectual. 2*do*, In captures at sea, the property and dominion of ships and goods is not lost nor transmitted, but, *juris postliminii fictione*, remains with the first owners till it be brought *inter præsidia hostium*, and twenty-four hours there, seeing all hopes of recovery then ceases. But so it is, the privateer was taken shortly after, when cruising on our north coast, and so the property still remained with Mr Stewart, and noways accresced to Captain Collyar.

This bill being sought to be passed without caution or consignation, the Lords refused it; but allowed it to pass if he offered caution.

Vol. II. Page 694.