

of rights of property except usucapion ; so that nobody can lose his right of property except somebody else acquire it. And this decision was according to good principles ; for while I retain my right of property, it is impossible that the action *rei vindicatio* can ever prescribe ; or, *vice versa*, the property being lost, the action must also be lost. It does not therefore follow, from this decision, that our prescription is not founded on negligence, but that we have no prescription at all of this kind. Supposing that positive prescription were to be founded upon the presumption mentioned, yet it would not follow that this presumption ought to take place against minors : our positive prescription would still be an *adjectio domini* by continuance of possession. Now, why should that possession run against minors, or why should not they be saved against prescription of their lands as well as of their obligations ?

1754. December 13. ARCHIBALD ANGUS *against* DRUMMOND.

THE question here was concerning a sale of lands by an apparent heir, upon the Act 1695 :—at what time the sums due to the creditors were to be accumulated, principal and interests, into one principal sum,—whether from the time of the sale, so as from that time they would be entitled to annualrents of their accumulate sum, or only from the time of the demand, so that they would only draw then the share of the price belonging to them, in the same manner as if the lands had been voluntarily sold by the heir, and the bond granted by the purchaser payable to him, and not to the creditors ? And the Lords found that the *first* rule was to be followed : *dissent. Præsides et Kaimes*, upon account that this was the rule followed in the sales of bankrupt estates, from which the plan of these sales upon the Act 1695 has been copied.

1754. December 17. STIRLINGSHIRE ELECTION PROCESS.

[Kaimes, No. 79 ; *Fac. Col.* No. 129.]

IN this case the Lords found that a man, year and day infest after the registration of his seasine, might be enrolled at a meeting for election, in terms of the 16th Act of his present Majesty, notwithstanding he was not year and day infest, and his seasine registered a year before the testing of the writ upon which that election was made, in terms of the Act of the 12th of the Queen. The President endeavoured to reconcile the two acts by saying that the Act of the 12th of the Queen only regarded the right of voting at an election, and the Act of the 16th of the King only the right of being enrolled ; so that a man might be entitled to be enrolled without being entitled to vote at an election till year and day was passed before the teste of the writ ; and therefore, as in this

case, the complaint was that the freeholders had refused to enrol the claimant, the Lords found that they had done wrong.

1754. *December 18.* SIR ROBERT GORDON *against* DUNBAR of Thundertown.

In a process of molestation and declarator of property, at the instance of the said Sir Robert Gordon against the said Mr Dunbar; the Lord Elchies, Ordinary, remitted it to the sheriff of the county to take trial, by an inquest, of the marches, and upon proof taken of the allegations *hinc inde*, to place stones ascertaining and distinguishing the true limits and marches. Upon this remit a proof was taken, and upon that proof a verdict pronounced by the jury settling the marches. The question was, Whether such a verdict was under the review of the Court of Session: My Lord Prestongrange, Lord Auchinleck, and Lord Justice-Clerk were of opinion that this verdict could not be set aside by the Court of Session, except upon evidence of corruption or gross wilful iniquity; and this opinion they founded upon the Act of Parliament of Ja. VI., Act 4^o, Par. 11, which appoints such cases to be remitted to the Judge Ordinary to take trial thereof by inquest, and the remedy prescribed by the Act is, that the inquest committing error shall be liable to an attain of error, or, as it is expressed in the act, to the *pœna temere jurantium supra assizam*; by which they thought it was meant that the verdict of such an inquest must have at least more force than the report of commissioners appointed in common form to take a proof. The Lord President said, on the other side, that the practice of trying such causes by inquest had begun not many years ago, and was a revival of the ancient manner of deciding such causes, by brieves of perambulation; that formerly all processes of molestation and marches were carried on in the form of declarators of property, and were determined as other processes before this Court: that since the new practice began of trying such causes by inquest, their verdicts were never looked upon as final, but were always reported to the Lords, and reviewed by them.*

The Lords, in this case, did not determine the general point, but found by a majority of votes that there was no reason in this case for altering the verdict of the jury.

In another case betwixt the same parties, the Lords not only sustained themselves judges, but reversed the verdict of the inquest.

1755. *January 10.*

— *against* —.

[Kaimes, No. 74; *Fac. Coll.* No. 125.]

A GENERAL disponee to all goods and gear having been decerned executor-creditor, according to the form of the Commissary Court, the nearest of kin of

* Balfour says that decreets of division made by an inquest upon a brief of division might be reduced by the Court of Session. *Vide Reports*, p. 180, &c.