to the benefit of it. And upon the question, it was found that the act does not extend to Scotland, 6th February 1753; but 20th July we altered this last, and found that the act extends to Scotland, and that this case is within the act.—Adhered, 18th December, 5 against 5. No. 63.

1754. *February* 1.

SIR ROBERT GORDON *against* DUNBAR of Newton.

No. 64.

IN a declarator of marches, I remitted to the Sheriff-Depute of Murray and his substitutes to try the marches by an inquest; and he accordingly summoned an inquest of gentlemen of credit, who with great labour took the proof upon the ground, which they perambulated with most of the witnesses, and as is too common in such proofs, their depositions were directly contrary to one another in the march most controverted. But the Jury took a middle march different from both. To this they seemed to have been led by some very unsuspected witnesses, and thereon returned their verdict, bearing, " that to their conviction the boundaries were," &c. When this proof and verdict was reported, Sir Robert Gordon, pursuer, alleged that the inquest had acted as arbiters, not as judges, and had not followed the proof adduced by either party, but made a new march unsupported by any proof, and that his proof was the most pregnant, having nineteen witnesses to six. The defender Mr Dunbar also contended that his proof was the most pregnant, but was willing to acquiesce in the verdict, and insisted that we could not alter the verdict. We agreed that we were not by law tied down to the verdict; but we thought that great regard was due to the verdict on oath of gentlemen of character, in whose presence the proof was taken on the ground, and who acted not as arbiters to decern what should be the march, but that to their conviction such was the march; and upon the question, it carried to approve the verdict.

See Steedman against Couper, 20th January 1744, *voce* ADULTERY.

See NOTES.