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 42, 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 attaint 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.