the acquisition of the liferent had been the commencement of the possession, some think that it ought to be different; *quia nemo potest mutare causam possessionis, &c.*, as in the case of *Jeffrey Irvine* against *Douglas*, *February* 1770, affirmed in the House of Lords, 26th April 1770, where a person entering by tack, but afterwards acquiring the right of property, was not allowed to ascribe his possession to the last, but to the first, in competition with the person from whom the tack and the possession flowed. The above general point was fixed by decree of the House of Lords, in the case of William Wilson *against* Campbell of Ottar; and the Lords were of the same opinion, 2d July 1777, in the case of M'Lean of Drunnia *against* Duke of Argyle. In the case of Ottar, the widow had been regularly infeft in the liferent of certain lands, by way of jointure, and had got possession before any diligence was done against the estate. The adjudger acknowledged her right; and, when he afterwards sold the lands, he excepted the widow's liferent from the warrandice, and gave the purchaser an equivalent of other lands during the subsistence of the liferent,—which equivalent the purchaser afterwards exchanged with the widow for her jointure lands. The particular mode of executing this bargain did not appear. On the one hand, it was argued, that the purchaser must be understood as having possessed in right of the widow and of the transaction with her; and therefore could not apply the possession to his own charter and sasine. On the other, that, standing infeft in the lands by charter and sasine, and having possession of them for 40 years *tanquam dominus*, he was secure by the positive prescription, and it was no matter how possession was obtained. The Lords gave judgment in favour of the pursuer, and against the prescription; but this judgment was reversed by the House of Lords. It was conceived to be highly inexpedient and endless for Courts to make inquiries about the origin of possession, after it was continued for forty years, and complete heritable titles in the possessor's person.

PRESUMPTION.

IN different provisions by a father to children, the last is supposed to cancel the first. So argued from the decision, Emilia Belsches *against* Sir Patrick Murray, *New Coll.*, 22d December 1752. But this is a mistake. That decision proceeded upon this principle, That, as there was no natural obligation on Sir Patrick Murray to have provided Emilia Belsches, it was to be presumed that, by the second provision, he had done all he intended for her, and that he had forgot the first legacy, otherways he would either have included it in the bond or cancelled it. But it seems to be a principle in law, that, where the person who granted the provision is under a natural obligation to provide,

both are held good, unless the one deed expressly cancel the other. This, however, is denied: and, by many, the above decision is held to be a standard rule, according to which all such cases fall to be determined, where it does not clearly appear that a twofold provision is meant. And, as to affection of parents to children, this no doubt will operate so far as to support a claim to a moderate and reasonable provision; but, in every other view, the natural and fair presumption is, that the last deed expresses the whole burden which the defunct intended to lay upon his heirs, unless some strong indication to the contrary shall appear.

Memorials, *Irvine of Drum* against *Earl of Aberdeen, &c.*

1776. *November 22.* The YOUNGER CHILDREN of MONTEATH of KEYS *against* The TRUSTEES of the DUCHESS of DOUGLAS.

THE above mentioned decision, in the case of Belsches, was mentioned in the papers, The Younger Children of Monteath of Keys *against* The Trustees of the Duchess of Douglas. The Duchess's sister having been married to Monteath, senior, the Duchess entered into a contract with Monteath, father and son, and her sister, to save the family, by old Monteath's disponing the estate to his son, and the son relieving him of his debts, and the Duchess and he giving the father an annuity; an annuity also to Mrs Monteath after her husband's death, and L. 1000 to provide younger children: besides all which, the Duchess bound herself to pay further provisions to the younger children. A few months after, the Duchess made a final settlement of her affairs, and left legacies to the Monteaths: in this settlement she recalled all former settlements. The younger children claimed on both deeds, and pleaded, that the first deed, being by way of contract, could not be revoked, and that in fact it was not revoked. It was no settlement of the Duchess's affairs; and therefore, unless the Duchess had declared that they were not to claim under both deeds, they were entitled to do it: her intention probably was so, but she had not done it. "The Lords, on report of Lord Monboddo, found, That the younger children were not entitled to claim the benefit of both deeds, but had it in their option which to accept of." In reasoning, they put the interlocutors upon the Duchess's intention, and that she was under no natural obligation to provide for them.