that of late years this practice had been followed in declarators of property, the determination of which depended upon marches; but it has never been the practice to make the inquest final judges in such questions: they did no more than report to the Lords.

Lord Kaimes said, that even anciently nothing was more ordinary than to review the verdict of juries *in civilibus;* and if it not had been so, there could have been no court of review, because all causes in those days, civil as well as criminal, were tried by juries. This the Lords found, and reversed the verdict of the jury in this case. *Dissent.* Auchinleck. Prestongrange *non liquet.*

1756. *June* 15. BAILIE *against* MENZIES.

[*Fac. Coll.* No. 207.]

A MAN disponed to certain trustees, for behoof of his nine children, all and sundry debts and sums of money due to him, and particularly certain bonds therein specially narrated, and, among the rest, one bond for L.500; all which subjects were to be divided among his children according to such proportions as the trustees should think fit. Of the same date he made a deed, wherein he made particular provisions to each of the children, reserving full powers to the trustees to divide the remainder of his estate among them as they should think fit.

These trustees accepted and acted; and the question here was, Whether the prescription of the fore-mentioned bond of L.500 was interrupted by their minority, or by the minority of the children for whose behoof it was conveyed to the trustees?

The President said, That, if the disposition had been to trustees, for payment of creditors, it was certain law that the prescription would run against the trustees, not against the creditors. It was also certain, he said, that when an executor-testamentary makes up his titles by confirmation, the prescription will run against him, and be interrupted by his minority, though he be only a trustee, and accountable to the legatees, creditors, nearest of kin, and others having right; and he said the case was the same here, where the disposition was *omnium bonorum* in favour of the children; and it was very different from the case of a disposition of a particular subject, in trust for behoof of a particular person; in which case the prescription would be interrupted, not by the minority of the trustee, but of the person for whose behoof the trust was; and the difference betwixt that case and this was, that here no particular bond could be said to belong to any one child, whereas there the particular bond was in trust.

On the other side, it seemed hard that the prescription should run against persons who could lose nothing by it, such as the trustees here, who are not liable for omissions, and not against the persons who were to lose by it, viz. the children. But the Lords were of the President's opinion. Prestongrange and Kilkerran *non liquet.*