

1714, February 12.

HENRY KER of Graden *against* ANDREW INGLIS, Merchant in Edinburgh.

IN the reduction and improbation at the instance of Henry Ker against Andrew Inglis for reducing his right to a tenement of land in Edinburgh,

Alleged for the defender, That in the year 1620, George Abernethy, advocate, did, in a contract of marriage betwixt Elizabeth Abernethy, his daughter, and John Dunlop, dispoise to them and their children, the tenement aforesaid, whereupon the said Elizabeth Abernethy and her husband were infeft; and the defender produced a connected progress of writs from them, by virtue whereof he instructed possession since the year 1688 by an adjudication; and *contended*, That his author's possession should be presumed *retro* till the year 1620, when his author's title commenced, unless the contrary be proved.

THE LORDS found, That the defender's possession is presumed *retro*, unless the pursuers prove, that some of his authors or predecessors possessed within the years of prescription, or used interruption.

Forbes, MS. p. 26.

No 613.

Possession presumed *retro*, until the possession of another appear.

SECT. IX.

Property of Moveables.—Bargain of Moveables.

1626. December 14.

MITCHELL *against* L. CAPRINGTON.

IN an action at the instance of Robert Mitchell against the L. Caprington, for making of certain silver work, as bason, laver, cups and spoons, arrested in his hands, as belonging to the Lady Ochiltree, and so as pertaining *jure mariti* to Andrew Lord Stewart of Ochiltree, her husband, debtor to the pursuer, to be forthcoming for satisfying of the said debt; it being controverted, how that part of the summons, viz. bearing the said silver work to pertain to the Lady, should be proved, seeing the defender, Caprington, *alleged*, That it could not be proved by witnesses, but allenarly either by writ or oath of party, especially seeing it was a matter of great importance, and that there was no special qualification libelled then how the same pertained to her, either that she bought the same, or that they were marked with her name, nor any other qualification to make them pertain to her; this allegeance was repelled, and the summons was sustained, bearing the same to pertain to her, which the LORDS found might be proved by witnesses, and no necessity of writ, or to refer the same to the party's oath; for the defender might allege and propone his defence upon

No 614.

In a *rei vendicatio*, it is not sufficient to prove the pursuer's property, unless he prove further *quomodo desit possidere*, because writ not being necessary to the transmission of moveables, possession presumed. The defender has acquired lawfully.