

No 7.

1628. *March 22.*KERR *against* BAILIES OF EDINBURGH.

AN incident being used for proving of an exception, which had run out the space of an year, the defender craved to have the party's oath, seeing the exception was to be proved by writ or oath of party.—THE LORDS would not grant the party's oath.

Auchinleck, MS. p. 144.

No 8.

1628. *July 3.*MAXWELL *against* LIVINGSTON.

A PARTY pursuing as heir, the defender craves his service and his title to be produced, instructing him to be heir. The pursuer *replies*, That the defender knows him to be heir, and refers the same to his oath.—THE LORDS repel that reply, and ordain the pursuer to shew his title.

Auchinleck, MS. p. 144.

* * * Durie reports this case.

IN an action betwixt Maxwell and Livingston, for payment to the pursuer of an heritable sum, addebted by the defender to the pursuer's father, and which he acclaimed, as heir to his father, and referred to the defender's oath that he was heir, and that it was so known to the defender; the LORDS found, that the defender could not of law be compelled to give his oath, upon the pursuer's title, but that the same ought to be produced, before the process could be sustained at his instance; as heir; for the defender could not be *in tuto* to give his oath; for, if the pursuer should die, and another were retoured heir to the pursuer's father, thereafter the defender might be compelled to pay the sum acclaimed over again; and also, if the service or retour were produced, he might impugn the same upon any allegiance, competent in law against the same; therefore, it being his title, it was found that the same ought to be produced before process could be granted.—*See PROCESS.*

Act. *Belsbes.*

Alt. _____

Clerk, *Scot.*

Durie, p. 381.

No 9.

1628. *July 19.*EARL OF MARR *against* His VASSALS.

MINORS are holden to give their oaths *post pubertatem.*

Auchinleck, MS. p. 144.

* * * Durie's report of this case is No 24. p. 8918. *voce* MINOR.