

No 6.

1622. July 19.

A. against B.

THE LORDS found, that a decret obtained before the Commissary of Aberdeen, as heir upon probation, by production of his sasine, would not prove him heir before the Lords, unless he produced his sasine or retour.

Fol. Dic. v. 2. p. 346. Haddington, MS. No 2652.

* * * Durie reports this case :

IN an action pursued by ——— against ———, which was intended by the pursuer, as heir to his predecessor, and for instructing of him to be heir, he produced a decret recovered at his own instance, before the Commissaries of Aberdeen, as heir to that same predecessor, verified in that judgment: Which sentence the LORDS found was not sufficient to prove him heir in this process, except he produced some other sufficient writ in this same process, then pursued before the Lords, which should be sustained to make him heir, by and beside that decret: Either the defender therein might have suffered the same to proceed in the pursuer's favours, or might have omitted to propone any argument against the writ then used to prove, which the defender in this process might competently propone, if the same writ were produced, as they found it should be in this same process.

Act. *Cheyn.*

Alt. ———.

Durie, p. 31.

No 7.

1628. January 16.

FINLAYSON against LOOKUP.

A PEREMPTORY proponed and proved before an inferior Judge, in a cause thereafter pursued before the Lords, the decret of the said inferior judge is found sufficient for proving of the same *peremptorie* before the Lords.

Fol. Dic. v. 2. p. 348. Auchinleck, MS. p. 152.

* * * Durie reports this case :

IN an action for payment of house-mails betwixt Finlayson and Lookup, the defender *alleging*, That he being pursued before the Town-court of Edinburgh, at the same pursuer's instance, for the double mail of the house, he there proponed an exception, that he had delivered the keys in August after the sentence of removing at the pursuer's instance against him, which keys were then received by the pursuer's wife, which exception in that judgment was found re-