1623. *January* 28.

EXECUTORS of KINNIER *against* EXECUTORS of ADAM RAE.

No 22.

THE executors of umquhile James Kinnier writer, who had written, and formed diverse writs and securities to umquhile Adam Rae, pursues the executors, and bairns of the said umquhile Adam, for payment to them, of the prices of the said writs, and referred to their oaths the summons, viz. both anent their knowledge of the said umquhile James's forming, and writing to the said umquhile Adam their father, diverse writs and securities; and also to their knowledge, that the same remained yet unpaid. THE LORDS found, that the defenders ought not to be compelled to give their oaths, albeit the pursuers referred the knowledge of the debt, that it was true, and that it remained unsatisfied as yet, to their oaths, seeing they were minors the time of the forming and making of the said writs, and could not have knowledge thereof, neither could they have knowledge, nor depone, whether it was paid or not.

Act. *Hope & Belshes.* Alt. *Nicolson & Lawtie.* Clerk, *Hay.*

Durie, p. 42.

No 23.

1624. *February* 3. Lady MONTGRENAND *against* The Laird of BLAIR.

THE Lady Montgrenand pursued the Laird of Blair as tutor to her son, for the charges of his entertainment for certain years. He excepted from the 1616 to the 1621, because at that time the minor's grandmother being alive and liferentrix of the whole fee, there was nothing at that time whereupon he might have been entertained; and so the mother having kept him, it should be imputed to her natural love, and she should have no recompense for it. *Replied*, That he having now come to his own, she had just action for all the years before; which was sustained, the Chancellor's vote prevailing.

Spottiswood, (MINORS and PUPILS.) *p.* 210.

No 24.

The oath of a minor may be taken in an exhibition.

1628. *June* 19. E. MARR *against* His VASSALS.

IN an action of improbation by the Earl of Marr against the Vassals of Marr, an incident being used by one of the defenders, who were minors, for having of the writs libelled, and the pursuer referring the having of these writs to the parties oaths; it being controverted, if minors could be holden to give their oaths, or if certification should be granted against them, and they holden as confest for not compearance, being for that effect cited, the LORDS found, That minors, albeit within 21 years, yet if they were past the age of 14 years, and so past tutory, ought to give their oaths in this and the like cases, and

that if they were present they should give their oaths; and if they compeared not after citation, they should be holden as confest. No 24.

Act. *King's Advocate, Alton, Nicolson et Stuart.* Alt. *Belshes, Cunninghame, Mowat, et Lawtie.* Clerk, *Gibson.*

Fol. Dic. v. 1. *p.* 575. *Durie, p.* 375.

*** Kerse reports this case:

June 20.—FOUND that a minor being past 15 years of age may be holden as confest.

Kerse, fol. 146.

1628. *June* 26. DUNBAR *against* LESLY.

No 25.
A cautioner of a minor, was allowed to produce the minor's renunciation to be heir, after the minor's death.

THE son of Hugh Dunbar of Lochingelloch, cautioner to John Lesly taylor, for the Laird of Mochrin, being minor, and charged to enter heir to his said father, at the instance of the said John; James suffers the bond wherein his father was cautioner to the said John Lesly to be transferred against him for null defence as charged to enter heir. Thereafter the said minor suspends the decreet, and finds George Campbell of Horsecleugh cautioner for him, against which protestations were admitted. Thereafter the minor raises a new suspension for him, and the said George Campbell as cautioner for him, and finds one George Dunbar cautioner for them in the said suspension, and likewise raised reduction of the decreet of transferring. The reason of reduction and suspension were both one, viz. that the said minor, with consent of his curators, offers to renounce to be heir; and, at the purchasing of the suspension, the renunciation was produced to the clerk of the bills, subscribed by the minor and his curators; but, before the day of compearance, the minor dies; notwithstanding George Campbell his cautioner insists to pursue the reduction of the decreet for his own relief, the same being raised at the instance of them both. It is *alleged* by James Lesly, That this renunciation cannot be offered now by the cautioner after the maker's decease, seeing it was a personal action to be done only by the maker thereof, who might either use the same or not at his pleasure; and if it had been used by himself, the defender might have alleged that it could not be received *quia immiscuit se hereditariis bonis*; and referred the same to his oath, of which reply and probation he is now prejudged by his decease. To which it was *answered*, That the reasons of reduction were relevant, notwithstanding of the answer; for the renunciation being lawfully made by the defunct, and produced and used by him in obtaining of the said second suspension, his death thereafter could not make it ineffectual to produce relief to his cautioner; as, for the inconveniency falling out by his death anent the