

decreet were produced, he would propone, and eke out reasons of nullity against the same, which is not in use to be done; for, in matters of little sums, the LORDS found no necessity to produce more than the precept; but the LORDS declared, that if, after production of the decreet, the letters should be found orderly proceeded, they would decern greater expenses against the suspender.

No 68.

Act. *Bellbrs.*

Alt. ———

Clerk, *Scot.**Fol. Dic. v. 2. p. 181. Durie, p. 297.*

1628.

SEATON against SEATON.

IN a pursuit by Seaton, as executor dative to his goodsir, and having licence against Seaton of Schelin, for payment of certain duties of lands pertaining to the pursuer's goodsir, intronitted with by the defender, of many years bygone, contained in the summons, the LORDS found no process upon that pursuit, while the pursuer produced his goodsir's right to the lands whereof he acclaimed the bygone duties from the defender; and found, that his licence and decreet, decerning him executor dative, was not enough to be a title to give him interest to pursue this action *per se*, without the production also of his goodsir's right foresaid, no more than his goodsir, if he were alive, would be heard to pursue, without shewing his right to the lands for his interest; and his executor could be in no better estate; neither was it respected, that the pursuer offered to prove the same *cum processu*; and that he *alleged*, that this should be sufficient to him, who probably could not have his goodsir's right, he not being his heir; which was repelled, and this right foresaid was found necessary to be used for his title.

No 69.

An executor pursuing for bygone rents of lands must produce the defunct's title.

Act. *Nicolson.*Alt. *Mouat.*Clerk, *Scot.**Fol. Dic. v. 2. p. 180. Durie, p. 329.*

1628. July 3.

MAXWELL against LIVINGSTON.

IT was found not competent to an heir pursuing for a debt of his predecessor's, to refer to the defender's oath, that he, the pursuer, was heir served and retoured; but it was found necessary for him to produce the retour.

No 70.

*Fol. Dic. v. 2. p. 180. Durie.**** This case is No 8. p. 9392. *voce* OATH OF PARTY.