

No 5. ordinance and appointment, to declare the irritancy.—THE LORDS sustained the pursuer's interest to declare the irritancy.

*Sir P. Home, MS v. 2. No 644.*

1746. June 19. MARGARET KENNEDY *against* MR JOHN ERSKINE.

No 6.

An adjudication being craved against a person, as heir to another in an estate, the present possessor was allowed to object and to dispute the defender's propinquity.

JOHN BLACKADER, tailor in Canongate, gave bond in trust to Margaret Kennedy, upon which she proceeded to adjudge from him the estate of Tulliallan, as charged to enter heir to Sir John Blackader of Tulliallan, alleged to be his predecessor, that thereupon she might quarrel the titles of Mr John Erskine advocate to the said estate.

Mr Erskine appeared for his interest, to stop the adjudication, and offered to prove that there was in being a nearer relation of Sir John Blackader than the said John. But the pursuer alleging that the estate was a male-fee, and he was heir-male,

THE LORDS found it competent to Mr John Erskine, being in possession of the estate of Tulliallan by proper titles of property, to object that the person against whom the adjudication was craved, was not the nearest heir of the deceased Sir John Blackader, and that there was a nearer heir existing; but allowed the pursuer to be heard on this allegation, that the estate of Tulliallan was a male-fee.

A.G. Lockhart. Alt. Jo. Erskine, sen. Clerk, Forbes.

*D. Falconer, v. 1. No 119. p. 146.*

1756. January 9.

OLIVER COULT, Esq; and Others, *against* The TOWN of MUSSELBURGH.

No 7.

The inhabitants of a town bound themselves by oath not to sell their fulzie, but to persons residing within the liberties.

The neighbouring heritors, not having a direct interest, found not entitled to challenge the combination.

EVERY burgh of Musselburgh at his admission has an oath administered to him in the following terms: 'That he shall not sell his muck and fulzie to any but those who dwell within the burgh and liberties thereof.' And this oath being of ancient date, has constantly been administered, and due obedience given to it. Some neighbouring heritors who were prejudiced by this regulation, brought a declarator against the Town of Musselburgh, subsuming, That the oath was an unlawful restraint upon the liberty of the subject, and concluding, that the inhabitants were not bound to give obedience thereto. This cause being reported by the Lord Ordinary, it occurred to some of the Lords in point of right, that a burgh of barony may, like a baron, confine their dung to their own lands; and, like a baron, discharge the importation of ale; that a royal burgh being erected for the sake of commerce, differs in both particulars. In the