

No 255. 1629. *June 2.* ———— *against WAIRDIE.*

ALTHOUGH witnesses be received in absence of the party-defender, and an exception be proponed, before the witnesses be examined, sometimes the Lords, in matters of small importance, will hear the exception, and discuss the same, if the probation thereof consist *in facto*, and will give the defender a term to prove his exception.

*Auchinleck, MS. p. 167.*

No 256. 1629. *December 11.* LAIRD HERMISTON *against BUTLER.*

A PERSON being summoned in an action of reduction, as one of the principal parties, after two diets, granted in the process for producing of rights called for, the pursuer may make a declaration that he will insist against the said person but for his interest; and thereafter, at the next calling of the cause, the pursuer passes from the declaration, declaring of new that he will insist against the said person, as a principal party, conform to his summons: It was *alleged* by the defender, That he could not alter his declaration, because he prejudged the defender, in using diligence for production of the rights called for to be produced by his new declaration. To which it was *answered*, That the defender was not prejudged, seeing the first declaration was after two diets taken to produce. THE LORDS found that the pursuer might alter his first declaration; and they granted a short day to the defender to produce what he pleased.

*Auchinleck, MS. p. 170.*

No 257. 1629. *December 18.* ———— *against CARNOUSIE.*

A PARTY-pursuer may take up his process before interlocutor.

*Auchinleck, MS. p. 169.*

No 258. 1630. *January 9.* GEORGE WATSON *against SMETON HEPBURN.*

IN an action between George Watson and Smeton Hepburn, the pursuer, having offered, by way of reply, to improve an instrument, and a day being assigned unto him for that effect, the pursuer suffered the day to pass over without raising of any diligence; and the defender having extracted the act, and desired the term to be circumduced, the pursuer offered to pass from his improbation, and declared he would insist in a reduction, (raised by him after the term assigned for improving.) THE LORDS would not suffer the pursuer