

S E C T. III.

Process against parties *subsidiarie* liable.

1626. July 13. THOMAS EDGAR *against* The LAIRD OF CRAIGMILLAR.

No 21.

It is the common practice that the heir of line must be discussed before the heir of tailzie, yet they may be both convened to hear and see a bond registered against them as heirs, albeit execution cannot be used against the heir of tailzie till the other be discussed first.

Fol. Dic. v. I. p. 538. Spottiswood, (HEIR AND HEIRSHIPS.) p. 136.

*** Durie reports this case :

IN a registration of a bond granted to Thomas Edgar, by the umquhile Laird of Craigmillar, which was craved by the said Thomas to be registered against the heir of line, and also against the heir-male and of tailzie, this action was sustained against them both, by the same summons in one action, and the bond was decerned to be registered against them both, but the execution against the heir of tailzie was superseded, until the heir of line was first discussed, as use is.

Act. Lawrie.

Alt. Belshes.

Clerk, Gibson.

Durie, p. 216.

*** See a similar decision, 12th February 1630, Creditors of Fairly against his Heirs, No 2. p. 3559. *voce* DISCUSSION.

No 22.

1627. November 20. ROLLOCK *against* CORSBIES.

DECREE was given against the executors of a cautioner for a curator, although the curator was not fully discussed, by legal execution against his person, lands, and goods ; but execution was superseded against the executors until the curator should be fully discussed.

Fol. Dic. v. I. p. 537. Durie.

*** This case is No 6. p. 2074. *voce* CAUTIONER.