1626. *November* 18. ADAM *against* GRAY.

THE LORDS fand the executors obliged to pay an heritable bond.

Fol. Dic. v. 1. *p.* 246. *Kerse, MS. fol.* 133.

1627. *February* 24. CARNEGIE *against* KNOWES.

A CREDITOR may, at his option, pursue either the heir or executor of his debtor, albeit the bond be heritable; because the heritable clause is always thought to be introduced in favours of the creditor, and therefore should not prejudge him.

Fol. Dic. v. 1. *p.* 246. *Spottiswood,* (CREDITORS & DEBTORS.) *p.* 76.

*** Durie reports the same case, calling the defender Lermonth:

IN an action betwixt William Carnegy and Lermonth, for payment of a sum of money contained in an heritable bond, whereby the debtor was obliged to pay annualrent to the creditor, as well not infeft as infeft, the LORDS found, that the creditor might as well pursue the executor of the defunct, as his heir, for payment of such heritable sums, notwithstanding that the bond was heritable, and that the heir needed not be pursued, and discussed before action were granted against the executor; but that, in deeds which were prestable by executors, the creditor had in his option and election, either to pursue the heir of the defunct debtor, or his executor, or any of them whom he pleased to chuse, for payment.

Act. *Aiton.* Alt. *Hope.* Clerk, *Gibson.*

Durie, p. 281.

1628. *July* 10. L. MELDRUM *against* CARNOUSSIES.

FOUND, by an act of sederunt, that heritable bonds may not be pursued against an executor, nor a moveable bond against an heir.

Fol. Dic. v. 1. *p.* 246. *Kerse, MS. fol.* 133.

1662. *July* 1.

WILLIAM BAILLIE *against* MARGARET HENDERSON and JANET JAMESON.

BY minute of contract, betwixt umquhile Jameson and Baillie, Baillie obliged himself to infeft Jameson in a tenement; for which Jameson obliged himself to pay 3000 merks of price. Jameson being dead, without any further progress upon the minute, Baillie pursues the said Margaret Henderson, as executrix