infeftment, nor obligation to give infeftment, neither to pay, as well not infeft as infeft, but simply bearing, to pay ten for each hundred yearly, after the terms of payment; these bonds were found to be heritable, and to pertain to the heir of the creditor; and the action therefore was sustained at the instance of the heirs of the defuncts to whom the bonds were given, and the same were found to be heritable, and not to be moveable, and consequently that the executors of the defuncts had no right thereto. And in the foresaid process of Causton, the bond was desired to be registrated at the instance of the heir of the creditor, which was sustained, because it was heritable, as said is, and against the executors to the debtor, maker of the bond, which the LORDS also sustained, and found, that albeit the bond was heritable, yet the executors might be convened for registration of the same against them, and that execution might follow against them for payment of the principal sum to the heir at his instance; and also, that they might be convened at the instance of the executors of the creditors deceased, for all the byruns resting owing preceding the said creditors' decease; which was so found, because the bonds contained no clause concerning any infeftment to be given for the said annualrent, which, if it had borne, then it behoved to have been sought to have been fulfilled by the heir of the debtor; but bearing, as said is, only to pay annual, and that the creditor might charge for his principal sum, it was found to be a fact prestable by the executors of the debtor. But, in this process, the Lords were of the mind, that if the pursuer should seek payment of the annualrent from the executors of the debtor, for any terms after the defunct's decease, and before he should seek the principal sum, and charge the executors for the principal sum, whereby it might become moveable, and so prestable by the executors, that in that case, viz. where the executors are not charged for the principal sum, but only to pay the annual, according to the bond, for terms, as they should yearly thereafter run and fall out to be owing, and the principal sum remaining in the mean time heritable and not sought, that *hoc casu* the executors could not be found addebted in these annuals, but the same should be craved from the heir; but this point was not decided, for it was not drawn in question *hoc loco*. No 37.

In Causton's Process, Act. *Oliphant.* Clerk, *Hay.*

In the other Process, Act. *Cuninghame.* Alt. *Belshes.* Clerk, *Scot.*

Durie, p. 200.

1627. *June* 29. DRYSDALE *against* CRAWFORD.

JAMES DRYSDALE, executor confirmed to Janet Drysdale his sister, convened Henry Crawford for registration of a bond made by him to Janet. *Alleged*, That the bond was heritable, and so pertained to the heir. *Answered*, He is the only person who could be heir, and being executor had the only right to the No 38.

No 38.

sum, which was so mean that it would not pay the service. To supply all, he offered to find caution to warrant him at all hands. For all this, the LORDS found the exception relevant.

Spottiswood, (EXECUTOR.) *p.* 113.

*** Durie reports the same case:

IN an action of registration of a bond at the instance of James Drysdale, executor to him to whom the bond was made, against Henry Crawford debtor, the LORDS found, that this bond could not be sought to be registrate at the executor's instance, albeit the same was confirmed in the defunct's testament, in respect the bond obliged the defender to pay annualrent therefor; whereby the Lords found, it pertained to the heir, and not to the executor; neither was it sustained what the pursuer answered, that he was that same person who would be heir in law, and that he also offered caution to warrant the defender at the heir's hands, and all others, seeing he was not retoured heir to the defunct; but the LORDS found the process might lie over while he should be served heir, and then, upon production of his retour, he might proceed to his cause.

Clerk, *Hay*.

Durie, *p.* 301.

1629. *June* 13. INGLIS *against* FRASER.

No 39.
An executor found not liable to pay the annualrent of debts owing by the defunct, and due after his death.
The contrary found, Kinnaird against Yeaman, No 40. p. 5469.

AN executor, or intromitter, is not subject to pay any more to the creditor of the defunct, but that quantity of the debt which was owing by the defunct the time of his decease, and wherefor he might have been convened himself at the time of his decease; and the said executor or intromitter (who represents only the defunct in the case he was in when he died) was not found liable for any running debt after the defunct's decease, as for annualrent of principal sums resting and running after the debtor's decease, ay and while the payment of the principal sum, as was done this day betwixt these parties, where the defender being convened, as intromissatrix with the debtor's goods, to pay the principal sum owing by him, for the which he was denounced rebel before his decease; and also the said intromissatrix was convened, upon the act of Parliament, to pay the annualrent therefor, of all terms since the defunct was denounced, and ay and while the sum was repaid. It was found that the intromissatrix was subject to pay no more than the principal sum, with the annualrent of so many terms as run after the horning, unto the time of the defunct's decease, but not of any terms after his decease, intervening before the intenting of that pursuit, moved against the intromissatrix. It would appear that the