No 110. the burden thereof, whereby the daughter was preferable to all the deeds of the son. 2*do*, That the brother is dead is instructed by the disposition, wherein the father reckons on no more children but three; especially considering, that the pursuer having offered to prove, by the defender's oath, that he was dead, the deponent acknowledged, 'that he suspected the worst.' Again, the portion of the deceasing children being provided, in the contract of marriage, to the survivers, the surviving children had right to draw the same without any title of succession. And though the former, by arriving at the age of sixteen, might seem *facere partes;* yet by their death, without uplifting the money, the latter's right revived as if the deceased children had never existed.

Duplied for the defender; The younger children's provision, that was moveable by the contract of marriage, became not heritable by the disposition, more than all the father's other debts wherewith he thought fit to burden his son; for, though the burden did undoubtedly make the son, and lands disponed to him, liable for the debts and provisions, which thereby turned heritable *quoad debitorem*, it did not change the nature of these debts, which notwithstanding remained personal *quoad creditorem*. Nor doth it appear to have been the father's intention, by the burdening clause in the disposition, to alter the nature of his daughter's provision, but only to secure her as to the payment; especially considering, that it was not originally constituted by the disposition.

THE LORDS found, that the provision in favours of the four younger children, by the disposition granted by the father to the son, became heritable; and that the brother is presumed to be dead. *See* PROOF.

Fol. Dic. v. 1. *p.* 372. *Forbes, p.* 201.

1734. *November* 21. CLELAND *against* PROVOST M'AULAY.

No 111.

A PERSON infeft upon an heritable bond, not payable, nor bearing annualrent till after his decease, having assigned the same in security of a moveable debt due by him, with procuratory and precept, this accessory security was found to make the sum contained in the bond heritable, though the creditor died before the term of payment of the annualrent-right.

Fol. Dic. v. 1. *p.* 372.

1740. *January* 8. DUKE of HAMILTON *against* The EARL of SELKIRK.

No 112.

FOUND, that not only irredeemable dispositions, but also adjudications, heritable bonds descendible to the heirs and assignees of the defunct, although no infeftment had followed thereon, descended to the heir of conquest; but that

the right of succession to bonds secluding executors, and containing no obligation to infeft in lands, descended to the heir of line. No 112.

Found also, that a personal bond of corroboration taken by the defunct to heirs secluding executors, of the principal sum and annualrents contained in an heritable bond, and in which bond was also contained a further new sum borrowed of that date, did not alter the succession as to the principal sums contained in the original bond which devolved to the heir of conquest, but that all the further sums contained in the bond of corroboration descended to the heir of line. *See* HERITAGE and CONQUEST.

Kilkerran, (HERITAGE and CONQUEST.) *No 2. p. 251.*

1764. *August* 1. EARL of HOME *against* JANET STEEL.

No 113.
A bond of corroboration, which is intended for no other purpose but to secure the debt, cannot have the effect to alter the nature of the original bond.

A BOND bearing interest being heritable before the 1641, a creditor who took a bond in these terms, without engrossing any particular destination in his bond, intended undoubtedly that it should go to his heir. A bond dated in 1638, bearing interest, and consequently heritable, was corroborated in the year 1663, the bond of corroboration bearing in common form to heirs, executors, and assignees. The heir of the creditor, who was also his executor, having confirmed the debt as moveable, and upon that title having deduced an adjudication against the debtor's estate, it was *objected* by the heir of the debtor, That the adjudication was void, as proceeding upon the title of a confirmation of an heritable bond, which is altogether inept. It was the opinion of the Court, that a bond of corroboration, which is intended for no other purpose but to secure the debt, cannot have the effect to alter the nature of the original bond, *quia actus agentium non operantur ultra eorum intentionem;* and therefore the adjudication founded upon the heritable bond, to which the executor could have no title, was found null and void.

Sel. Dec. No 223. p. 288.

*** This case is reported in the Faculty Collection:

IN 1638, James Earl of Home as principal, and George Home, younger of Wedderburn, William Home of Ayton, Sir Archibald Douglas of Spot, Sir Robert Douglas of Blackerston, and Alexander Home of Haliburton, as cautioners, granted bond to Laurence Henderson, whom failing, to his two daughters, Janet and Barbara, for 3000 merks, with annualrent and penalty.

In 1659, Laurence Henderson, with consent of his two daughters, conveyed the bond to his other two daughters, Isabel and Margaret.

In 1663, the Earl, as principal, with Alexander Home of Ayton, and Sir Robert Douglas of Blackerston as cautioners, granted bond of corroboration to