

No 95.

1628. *January 26.* LD. DRUM *against* TENANTS OF LD. LESMORE.

A DECREE of spoliation of teinds, wherein the tenants were held as confessed upon the quantities libelled, which were apparently exorbitant, was restricted to the quantities contained in another decree, obtained by the same pursuer for other years, and proved by witnesses.

Fol. Dic. v. 2. p. 184. Durie.

* * This case is No 42. p. 9379. *voce* OATH.

No 96.
What if the
pursuer has
no title in his
person.

1628. *July 2.*WILSON *against* HAY.

IN a reduction of a decret Wilson against Hay, the decret being recovered against the reducer, at the instance of the Executors of umquhile Patrick Ramsay, for payment of a sum addebted to the said umquhile Patrick, by an heritable bond, by a debtor of the said Patricks, and which sum the said Wilson, reducer, was decerned to pay, albeit he was not debtor in the bond, but as he who promised to pay the same, the promise being referred to his oath, and in his absence he holden *pro confesso*; the reason of the reduction was, because the bond was heritable, for promise of payment whereof he was convened in the process, and so the executors had no right to pursue therefor, but only the heir, and so the heir not having recovered the sentence, the executors could not pursue him, and he ought to be reponed against the sentence: This reason was found relevant, albeit the executors *alleged*, That this reason ought not to be prejudicial to their sentence given upon the party's contumacy, who if he had compeared, and proponed this, they would have sustained the pursuit, by replying then, which they now allege, that the same persons who are executors, are also heirs served and retoured to the defunct; notwithstanding whereof the reason was sustained, and the party reponed to give his oath, seeing the decret, against which he desired to be reponed, was only obtained by the executors, without mentioning the heir, so that the party needed not to compear in that process so pursued by those who had no right; and whereas it is fortified by the foresaid concurrence of the heir, seeing he was the person who had the only right to claim the sums, if he would claim the party's oath, he ought to have it; and so reponed the reducer to depone thereon, notwithstanding the prior sentence.

Act. *Nicolson, McGill & Miller.*

Alt. *Lermonth & Aiton.*

Clerk, *Gibson.*

Fol. Dic. v. 2. p. 183. Durie, p. 380.