

1630. July 22.

WILLIAM SALMOND *against* EXECUTORS OF JOHN WEIR (OF ORE).

William Salmond pursues the Executors of John Weir for warrantice of an annual-rent out of a tenement sold by the defunct to the said Salmond, for the which he was distressed. It was alleged, that the executors could not be convened for warrantice of an heritable bond. To the which it was replied, that the distress being of a moveable sum, the pursuer had it in his option either to pursue the executors or the heir for the same; which the Lords sustained.

*Auchinleck MS. p. 252.*

No. 27.

\* \* Durie reports this case :

The deceased John Ore having sold a tenement by contract to Salmond, with absolute warrantice therein; the said Salmond pursues the heir of umquhile John Ore, to hear him decerned and declared to warrant the said disposition: And the defender alleging, that he ought not to be decerned to warrant, seeing there was no distress qualified, and also that he had a reduction intended, for reducing of that disposition; the Lords nevertheless decerned to warrant, seeing in effect that was but a declarator of the warrantice; but superseded all execution, while the pursuer were lawfully distressed; and found, that this decret should not be prejudicial any ways to this defender, to pursue his action of reduction of that disposition as accords.

*Alt. Gibson.*

*Clerk, Scot.*

*Durie, p. 553.*

No. 28.

1630. February 3. BROWN *against* LOGAN and FININE.

Parties bound in warrantice ought to have the plea intimated to them, and notwithstanding decree was given against the party that had warrantice was not respected; yet the persons bound in warrantice promitted to propone all their defences by way of suspension, which might have staid the said decree.

*Auchinleck MS. p. 252.*

No. 29.

1635. June 25.

GRIEVE *against* HEPBURN.

Hepburn dispones a tenement to certain persons in portions, and obliges him to relieve the buyers of an annual-rent of 100 merks, which lay upon the whole tenement. The party to whom the annual-rent is due, pursues pointing of the ground, or a part thereof, for the annual-rents. A. G. one of the persons distressed, intends

No. 30.