1665. *June* 30. STEVENSON *against* CRAWFORD.

No. 31.
Title to pursue sustained without confirmation.

Stevenson being surrogated executor-dative, *ad omissa*, and having licence to pursue, insists against Crawford for a debt of the defunct's, alleged omitted forth of the principal testament. The defence was no process, until the executor-dative *ad omissa* be confirmed; but he cannot insist upon a licence to pursue, because the principal executor having made faith, that the inventory given up by him, is a full inventory. Any that crave to be dative *ad omissa*, are never admitted, but upon certain knowlege, and so must confirm, and get no licence.

The Lords repelled the defence, especially seeing the pursuer was a creditor.

Stair, v. 1. *p.* 292.

*** Newbyth reports this case:

James Stevenson and Patrick Watt, as executors, decerned *ad omissa* to umquhile William Stevenson, procurator before the Commissaries, and having licence to pursue, pursue James Crawford for payment of the sum of £.2154. conform to his ticket. The pursuer's active title as executor *ad omissa*, and having licence to pursue, being quarrelled, that licence ought only to be granted to executors principals, and not to *ad omissa*, the Lords sustained *no* process upon the licence produced, and whereunto the executor principal was not called.

Newbyth MS. p. 31.

*** This exactly copied from the MS. but probably the word *no* is erroneous, being contrary to the other reports of the same case.

*** Gilmour also reports this case:

In a process at the instance of James Stevenson and Patrick Watt, as executors *ad omissa* decerned to umquhile William Stevenson, and having licence, the licence being quarrelled as not sufficient to furnish a title for a process, without a confirmed testament-dative;

The Lords sustained the same, in respect they were decerned though not confirmed; to which decreet-dative the executor-principal was called, who had the only interest to quarrel the dative, and that before sentence the debt must be confirmed.

Gilmour, No. 150. *p.* 107.

1666. *July* 18. STEEL *against* HAY.

No. 32.

An apparent heir, where his predecessors tenants had been ejected, may pursue an action of ejection without being served heir.—See Gib against Hamilton, No. 4. p. 16080.

Dirleton.

*** This case is No. 8. p. 3611. *voce* EJECTION.