

No 25.

A legatee cannot pursue the defunct's debtor for his legacy, where there is an executor confirmed, unless the executor omit to confirm the same.

1623. February 4.

JOHN LEITCH *against* BALNAMONE.

IN an action betwixt Mr John Leitch and Balnamone, THE LORDS found that a legatar, who had a sum left in legacy to be paid out of the readiest money owing to him in Fife, had not *legatum speciei*, and albeit it was *legatum determinatum et circumscriptum*, yet it was not *legatum individui*, and therefore could not have action against the debtor, but only against the defunct's executor, especially seeing there was a testament confirmed. But they found that if the executor-nominate had not confirmed, or had omitted to confirm *rem legatam*, that in the first case the legatar might obtain himself decerned dative, and in the second, might pursue the detainer of the particular left in the legacy. It was affirmed by some, that the practice of the commissariot was, that if a legatar had pursued the defunct's debtor, and had obtained decret and payment, or deliverance *speciei legati* a creditor of the defunct might pursue the creditor as intromitter, and recover from him that which was left to him in legacy, and paid to him.

Fol. Dic. v. 1. p. 273. Haddington MS. No 2744.

. Kerse reports the same case :

THE LORDS found that a legatar has no action immediately against a debtor, but against the executor intromitter with the goods.

Kerse, MS. fol. 127.

. This case is also reported by Durie :

IN an action pursued by the Laird of Balnamone against the Laird of Balcomie for payment of a sum of money owing by him to Mr John Leitch, and which was left in legacy by the said umquhile Mr John, the LORDS found, that the legatar's self, nor the pursuer his assignee, had no action against the debtor, and that they could pursue no person for the legacy but the executor of the defunct, who had the only action competent to him against the debtors of the defunct, and that he was subject to answer to the legatars for their legacies.

Durie, p. 43.

1623. March 11.

DOUGALL *against* HENDERSON.

No 26.

Found the reverse of No 22, p. 3842.

IN an action betwixt Dougall and Henderson, an obligation being granted to a woman, and to her husband, to be paid to them ; the husband living a long space after the decease of the wife, and thereafter the husband dying, the