

No 23. 1627. December 5. A. against B.

IN an action at the instance of ———, as executor dative, decerned *ad omissa* against ———, for payment of the omitted goods,—THE LORDS found no necessity that the principal executors confirmed should be summoned in this pursuit, they being summoned to the decerning of the pursuer executor *ad omissa* before the Commissaries.

Act. Gibson.

Alt. Herriot.

Fol. Dic. v. 1. p. 133. Durie, p. 317.

No 24. 1631. March 12. DUFF against ALVES.

Found in conformity with No 21. p. 2187.

THIS cause is mentioned March 8. 1631, *voce* EXECUTOR, wherein the pursuit being moved at the instance of the executor dative, decerned and confirmed *ad omissa et male appretiata*; and the defender *alleging*, that no process ought to be granted upon the confirmed testament dative produced, because the principal executor, confirmed in the principal testament, was not summoned, nor called to hear and see an executor dative given and decerned, as ought to have been done, when the commissary decerned the pursuer executor dative;—THE LORDS found, the Commissaries could not decern executors dative *ad omissa et male appretiata*, except the principal executor had been first cited thereto, and that such acts cannot be done, neither are they in use to be done, without such preceding citation; but, because the decret dative was not produced for the pursuer's title in this pursuit, but only the testament dative confirmed, they found this pursuit instructed sufficiently by this testament, and that it was not necessary to produce the decret, decerning him executor, nor to reply, that the principal executor was cited thereto; but if the defender would produce the decret dative himself, whereby it might be known, if he was cited or not, they would consider thereof, and have respect to the necessity of the citation of the principal executor.

Fol. Dic. v. 1. p. 133. Durie, p. 581.

* * See The same found in Lees against Dinwoodie, 10th December 1707, Forbes, p. 206. *voce* EXECUTOR.