

S E C T. IV.

Citation in Confirmations.

1622. February 14.

BAIN *against* ———.

IN an action, pursued at the instance of one Bain as executor dative, decerned to certain omitted sums, left out of the defunct's principal confirmed testament, THE LORDS found the testament *ad omissa*, which was the pursuer's title and ground of his action, to be null, because the executors confirmed in the principal testament were not cited to the testament dative *ad omissa* specified by the edict, and that the said testament made no mention that they were warned thereto; and therefore the Lords found no process in that action upon the testament dative *ad omissa*.

Clerk, Gibson.

Fol. Dic. v. I. p. 130. Durie, p. 17.

No 21.

A commissary cannot decern an executor-dative *ad omissa*, except the principal executor be first cited.

1623. June 28.

ANTHONY WHITE *against* ———.

IN an action pursued by Anthony White, as executor dative, decerned *ad omissa*, to certain goods and gear, omitted by the executor confirmed in the principal testament of umquhile John Young, Sheriff-clerk of Edinburgh, THE LORDS sustained this testament *ad omissa*; albeit it was *alleged* for the defender against the same, that it ought not to be sustained, seeing the executor confirmed in the principal testament, was not specially warned by the edict, to hear and see executors dative decerned *ad omissa*, who ought to have been necessarily warned thereto, or else nothing could have lawfully proceeded thereupon; which allegiance was repelled, because by the edict the executors were generally cited, to hear executors *ad omissa* decerned; which the LORDS sustained, albeit the executors principally confirmed were not thereby warned; for this was sustained, because Anthony White was a creditor of the defunct's, and so the pursuit was found the more favourable.

Act. Aiton.

Alt. Primrose.

Clerk, Hay.

Fol. Dic. v. I. p. 133. Durie, p. 68.

No 22.

A testament dative *ad omissa* was sustained, the principal executor, being, by the edict, generally cited to hear executors *ad omissa* decerned, though there was no personal citation.