

1628. *January 19.* SEATTOUN *against* SEATTOUN of SCHITHM.

A LICENCE granted to an executor-dative, to pursue for mails and duties owing to a defunct, who deceased a long time before, is not found a sufficient title to instruct a pursuit against the heir of the defunct, except the pursuer also produce the defunct's sasine. Page 72.

1628. *January 23.* JOHN PATERSON and HIS CURATORS *against* MAWCHAN.

FOUR bairns are confirmed executors to their father. Three of them decess; and the fourth bairn survives the rest; and, with consent of her curators, summons him who was last tutor to the whole bairns, to make count of his intromissions. The tutor alleges that he could not make count to the pursuer, but only of so much as concerned her part, seeing the rest of the bairns, who were deceased, had other executors who might convene him for a new count. The Lords found, That he ought to make the count of the whole, that it might be known what was due to the pursuer for her own part; and reserved to him his defences, after count, concerning those parts which pertained to the other three bairns. Page 27.

1628. *January 25.* ———— *against* ————.

A MINOR being charged to enter heir, and, upon the charge, decret being recovered against her, and being charged upon the decret; suspends, that she, being minor when she was charged to enter heir, and wanting curators, could not make a lawful renunciation; but now was content to renounce, *re integra*. The Lords permit her to renounce, by way of exception, she proving her minority; although it was not usual, before, to be granted in the like causes, but by way of reduction. Page 204.

1628. *January 14 and 26.* JOHN ADIE *against* JOHN GRAY.

THE son is pursued as intromitter with his father's goods and gear, at the instance of one of his father's creditors. *Post litem intentam*, he confirms himself executor, before year and day expire, and alleges he ought not to be pursued as intromitter, but as executor; and, therefore, should have *beneficium inventarii*. The Lords sustain action against him as executor, and not as universal intromitter.—14th *January* 1628.

In the same cause, John Adie foresaid pursues John Gray, for a debt owing by him to the defunct. John Gray alleges that he has confirmed the testament within year and day, and that, in this testament, he has confirmed himself executor dative, as a creditor; being bound for sundry debts for his father, whereof the terms of payment are past before the pursuer intented his action, and were paid by him sinsyne; which debts did exhaust the whole inventory. The Lords sustained the exception for the debts paid before the intending of the pursuer's summons.—26th *January* 1628.—[See 2d *February* 1628.] Page 72.