

1628. *November 26.* GILBERT WILLIAMSON *against* The LEGATORS of PATRICK PURDIE.

PATRICK Purdie makes his testament *in anno* 1625 ; he dies *in anno* 1626 ; he declares, that he has, *in bonis*, L.25,000, according to extract made by himself out of his count-book, bearing the particulars ; which extract and count-book he declares, in his testament, is in his chest, in the keeping of Gilbert Williamson, whom he named one of his executors, in testament. He leaves all his gear in legacies. After his decease, his executors found not his gear answerable to the sum foresaid, by a great deal, and confirm no more but about L.10,000 ; and raised summons against the legators to hear and see their legacies reduced to a certain portion, conform to the sum confirmed by them. It was answered, That the executors could not confirm less nor was confirmed in the defunct's testament. The Lords found, They might confirm less, upon their own hazard, seeing the legators, if they knew of any more gear, may take a dative *ad omissa*.

*Page 238.*

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1628. *November 28.* ————— *against* The BAILIES of INVERNESS.

Summons for not executing caption needs no continuation.

*Page 221.*

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1628. *December 2.* WILLIAM ROBERTSON *against* JOHN JAMIESON'S HEIR.

By contract of umquhile John Jamieson, in Glasgow, he sells Mr Thomas Burnet 100 stones of butter, for three pounds the stone. In the which contract, the said John Jamieson grants him to have received the sum of L.80, in part payment of the price of the said butter. To the which contract, the said Thomas Burnet constitutes William Robertson assignee, who craves the said contract to be transferred, *active*, against the heir of the said umquhile John Jamieson, *passive*. It was alleged, The said contract cannot be transferred ; because it was null, being a matter of importance, and subscribed but by one notary. To the which it was answered, Ought to be repelled, because the pursuer declares, that he craves the said contract to be transferred, to this effect, that he may have execution thereupon, allenarly for the sum of L.80, which is confessed by the said contract to have been received by the defunct, and passes from all the remaining heads of the said contract ; and as he might pursue for the said sum by way of action, and verify the same to be owing by the said contract, albeit subscribed but by one notary, so he may pursue the said transferring with the said declaration and restriction of the execution to follow thereupon. The Lords sustained the transference, with the declaration foresaid.

*Page 44.*

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