

diligence, or the like ; but nothing can be allowed in a factor's exoneration before the Lords, without the nicest probation of circumstances.

No 7.

THE LORDS found, That the creditors' charge must be constituted against Mr Cowper, either according to the fiars, or the prices he sold at ; reserving to him to be heard upon what diligence he was liable for, and what ease he may claim upon the account of his not recovering payment of the whole agreed prices from the merchants.

*Fol. Dic. v. I. p. 311. Forbes, p. 416.*

1711. *January 23.* CREDITORS OF HAY of Park *against* FALCONER.

No 8.

A FACTOR upon a bankrupt estate was found liable to accmpt for victual rent according to the fiars, or according to the prices received by him deducting all losses, in the option of the creditors.

*Fol. Dic. v. I. p. 311. Forbes.*

\* \* \* See This case, No 27. p. 2097.

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### S E C T. III.

Wronguous intromitter accounting.—Whether competent to question the mode of striking the fiars.

1685. *December.* MUDIE *against* CRAIGIE of Gairsie.

No 9.

IN the action at the instance of William Mudie of Milsetter against William Craigie of Gairsie, for his intromission with some victual rent in Orkney ; and there being no fiars there, but only the fiars made by the stewart, which were far above the true prices, being penal, made only to force the King's tenants to pay their rents ; the LORDS ordained the current prices at which the victual in Orkney was in use to be sold yearly to be that rule, and appointed the same to be proven by such witnesses as were heritors and merchants who were in use to trade with victual in that country. *Item*, THE LORDS having advised the report of the commission, found the same null, and had no regard to the testimonies of the witnesses, because they did not bear these words adjected to every deposition, ' As I shall answer to God,' albeit the deposition did bear that the witnesses were deeply sworn.

*Fol. Dic. v. I. p. 311. Sir P. Home, MS. v. 2. No 742.*

\* \* \* This case is reported by Fountainhall, *voce* WITNESS.