

four years free rent, or a fourth or fifth of the value of the estate, or a lesser proportion, and for that effect ordained a condescence to be given in, what may be a reasonable provision either for wives or younger children.

No 145.

*Fol. Dic. v. 1. p. 499. Fountainball, v. 2. p. 60.*

1701. June 19.

WRIGHT, Petitioner.

MR ROBERT WRIGHT, factor to the estate of Bruce of Kennet, gave in a bill, representing, that, by the tenants' late delivery of their farm bear, the prices were fallen, so that he could not win to the Sheriff of Clackmannan's fiar (within which shire the lands lay), which was L. 8 Scots, and therefore craved the Lords' warrant to sell it at the best avail, as the markets now rule. This was to get it allowed when he came to fit his accompts; but the Lords thought it not regular to give him any directions in the matter, but left him to his own method; and this course they also take in setting of lands, as in the case of Meik of Leidcassy, who, by bill, shewed that he had 15 bolls of bear, 3 bolls of oats, some turses of straw and capons, as a feu-duty payable to him yearly out of the kirk-lands of Coupar's Grange; and that Souter and Crockat, the heritors, being either dead or bankrupt, the lands had lien lea these two years bygone, none offering to meddle with them; and seeing not only he, but the minister's stipend, and King's cess, and other creditors, were all disappointed by this course, therefore he craved a factor might be put in to set or labour the lands, that their debts might not perish; the Lords considered, if they had not adjudged already, they might do it, and then, by their own right and authority, they might put in a factor; and therefore refused the bill. Likeas, when factors cannot get lands set to the full avail to what it paid formerly, the Lords refuse to interpose their authority, because it is frequently sought with no other design but to give down the rental, that at the roup it may be sold at an unworth to the prejudice of the posterior creditors; and so they are left to act in these things as rational provident men would do, as they will be answerable on their peril.

No 146.

A factor on a burdened estate asked advice of the Court relative to his management. Refused.

*Fol. Dic. v. 1. p. 499. Fountainhall, v. 2. p. 114.*

1705. January 6.

LESLIE, Petitioner.

LESLIE of Balnageith, as assignee by Leslie of Middleton, having right to a bond of 6000 merks due by Sir Patrick Ogilvie of Boyne; and my Lord Seafield having got the gift of his escheat and recognition, Balnageith adjudges for this debt; but when he comes to extract his decret, he finds no penalty liquidated in his bond, but only the general clause 'with annualrent and penalty,' without specifying what the penalty should be; whereupon he supplicates the

No 147.