

No 1. into the factorie, whilk was four bolls victuall for the lifetime of the factor. THE LORDS, after long reasoning, votit for the most pairt, and fand that the factorie should stand notwithstanding of the tack, and ordained the factor to be answered of his four bolls victuall.

*Fol. Dic. v. 1. p. 287. Colvil, MS. p. 325.*

1624. November 12. NASMITH against NASMITH.

No 2.  
A factory granted by a minor with consent of his curators indefinitely, does not fall at majority, but continues until it be *de facto* recalled.

In an action for making of tutor counts, pursued by the bairns of umquhile John Nasmith, chirurgion to his Majesty, against James Nasmith their tutor, the LORDS sustained the pursuit at their instances, as they were authorised by curators given to them in England, where they were for the time, by the Archbishop of Canterbury; which act of curatory, so made in England, the LORDS sustained, and found it sufficient to authorise the said pursuit, and to authorise the minors in pursuing of the tutor in this judgment in Scotland, for his intromission with their means in Scotland; neither found the LORDS any necessity, whereby that the minors should be compelled to chuse again curators after the laws and form of Scotland, for authorising of them in the said pursuit, for the goods in Scotland.

In this same pursuit also, the LORDS found, that a procuratory being once lawfully made by a minor, with consent of his curators, was sufficient to give their procurator power to do the deeds contained in the procuratory, after that the minor granter thereof became major, at the years of whose majority, the procuratory ceaseth not, nor becomes extinct, but that the same endures and lasts also after the majority, aye, and while it be revocate and discharged by him. See FOREIGN.

*Act. Hope & Stuart.*

*Alt. Nicolson & Burnet.*

*Clerk, Scot.*

*Fol. Dic. v. 1. p. 287. Durie, p. 145.*

1714. November 17.

MARK DRUMMOND, and MR DAVID DRUMMOND, his Father and Administrator, and CHARLES LERMONT, against JAMES SINCLAIR.

No 3.  
A debtor granted an assignation of mails and duties to one of his creditors, for payment

THE deceast Charles Lermont being in the year 1699 to go abroad, makes an assignation in favours of James Sinclair of the rents of some houses in Edinburgh, for payment of several debts due to the assignee and others, all contained in the assignation; which assignation bears to be for 13 years; and ay and while these debts should be paid, with allowance of L. 5 Sterling of yearly sa-

lary. Shortly after granting this assignation and factory, he grants a bond of tailzie in favours of Charles Lermont his nephew, and the said Mark Drummond, tailzing to them, (failing heirs of his own body) the foresaid houses; whereupon, after his decease, they were served heirs of tailzie, and in implement of the bond, adjudged; and now insist, that either the subject may be sequestrated in another factor's hands, whom the pursuers would name, and who would serve *gratis*; or if Mr Sinclair inclined to continue, that the Lords would discharge the continuance of his salary.

*Answered* for the defender, That the right in question being a disposition granted ay and while he and the other creditors were paid, with a salary for managing the subject, therefore, as the granter could not remove him, or invert his possession, till the debts were paid, so neither can his heirs of tailzie, who are liable in warrandice.

*Replied* for the pursuers, *imo*, That the right is no real right, but a naked assignation to mails and duties with a factory; and these subsist no longer than the granter's life; and though heirs be liable in warrandice, yet that is only to be understood according to the nature of the right; and so the warrandice here cannot be said to be contravened by the heirs taking on them the managing of their own estates, and intromitting with the rents after the predecessor's death, which are indeed not assigned, and far less are they obliged to continue a salary to a factor. And yet, *2do*, They are willing the rents be uplifted by a factor, (for the behoof of the creditors, if any yet remain) whom they will find to serve *gratis*.

THE LORDS found no salary due to James Sinclair from Martinmas last; but allowed him to continue his possession, he finding caution to count to all parties having interest, and to do diligence; and in case of his refusal, remitted to the Ordinary to sequestrate, and appoint a factor in common-form.

Act. Falconer.

Alt. Hay.

Clerk, Gibson.

Fol. Dic. v. I. p. 287. Bruce, No 23. p. 31.

1724. July 14.

FRANCIS HEDDRINGTON of Astonbie *against* JOHN-HENRY BOOK and THOMAS DOD, of London, Merchants.

MESSRS BOOK and DODS having entered into articles of agreement with Obadia Sedgwick, 11th August 1715, and covenanted, that upon their obtaining a tack of certain lands, coalleries, and iron-works, from the Dutchess of Buccleugh, he should be admitted a sharer for one fifth part, and have a salary of L. 150 Sterling yearly for managing the subject of the set. The tack was accordingly obtained in September 1715, and they, upon the 10th of that month, in implement of the articles, assumed him as partner for one fifth, and granted

No 3.  
of debts due to the assignee and others, bearing to endure for 13 years, and ay and while these debts should be paid, with allowance of L 5 Sterling of yearly salary. After the debtor's death, his heir withdrew the salary, and it was found, that the factory fell by his death.

No 4.  
A factory was granted to a person during life. It afterwards appearing that he was unfit for the management, the Lords found the factory revocable.