

No. 2.

1743. July 20. DEMPSTER *against* FERGUSON of Kinmundy.

IN a like contract (as in No. 1.) for a number of years, but with the addition "by and attour performance," the heritor having delivered all that was paid him by his tenants, except some that out of a sort of charity he sold at a moderate price, not above the contracted price, to a neighbouring town, the Lords found him liable for the current prices, so far as the tenants had delivered to him, (for they thought he could not give charity on his merchant's expense) but for the superplus found him liable only for the small conventional penalty, viz. one merk per boll, or in the merchant's option for the price paid him or promised him by his tenants.

See 16th July 1746, Scott, *voce* JURISDICTION.

See *PACTUM ILLICITUM*.

See NOTES.