

F A C T O R.

SECT. I.

Factory, when revocable—when understood revoked.

1581. February. STEWART *against* COMMENDATOR of Paisley.

THE Commendator of Paisley made one callit B. factor to him, to receive and take up frae the tenants of the isle of C., 40 bolls victuall, whilk appertained to him as for the teinds of the lands of the said isle, and band himself into the letters of factorie, that the factor should have four bolls victuall for his labour and travel. Thereafter, the said Commendator set ane tack of the said victualls to ane Stewart, for the yearlie payment of 20 lib. This Stewart desyrit letters conform to his tack. Compeared he to whom the factorie was made, and *alleged*, that he having the factorie set to him for his lifetime, and having ane yearlie dutie for the same, he could not be prejudgit thereintill, but behoovit to be ansrit and obeyit conform to the same. It was *allegit* be the tacksman, that the tack could not be hinderit be reason of the factorie. The matter being reasonit among the Lords, some were of that opinion, that ane factory could not hinder ane tack; for he that made the factory abdicated not the power frae himself to set tacks; and so they might both stand, and a factory might be ay revokit and callit back again *ad placitum* of the setter, in respect it was to his use, weill, and commoditie, and not to their use and commoditie to whom it was made. It was reasonit upon the other part, that his factory was of the nature of ane tack 'quia de jure ubi conventum inter partes est, interveniente mercede, nascitur potius locati obligatione quam mandati aut negotiorum gestorum, prout colligunt ex, ff. Locati;' for there was ane special duty nominate

No r.

A churchman granted a factory for the factor's life, to uplift some bolls of victual, with a certain number of them to himself for his trouble. The Lords found, that a tack afterwards let by the churchman of the bolls, did not prevent the factor from having right to his salary.

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-