

1666. June 30.

CHALMERS *against* BASSILY.

No 3.

MR WILLIAM CHALMERS being to go abroad, grants a factory to Bassily, bearing to endure until he returned, and after discharged the same in writ. He now writes a letter to his father, bearing, That he would do any thing he could to recal and reduce that factory; whereon a reduction was raised, on this reason, That all factories of their nature are revocable at the pleasure of the constituent, albeit they contain a term of endurance. It was *answered*, That this factory, containing such an endurance, cannot be revoked till the term come; *zdly*, Albeit factories be revocable, yet it must be *re integra*; but here the factor hath advanced considerable sums of money, upon consideration of the factory.

THE LORDS found the factory revocable, the factor being always refunded of what he profitably expended upon consideration thereof before he quit possession.

*Fol. Dic. v. I. p. 594. Stair, v. I. p. 384.*

\* \* \* Newbyth reports this case :

MR WILLIAM CHALMERS, son to William Chalmers, writer to the signet, having right to certain tenements of lands in Edinburgh, which he derived from Daniel Melvil his grandfather, having gone off the country, grants a factory to John Bassily to uplift his rents and house mails, and with this express clause, that the factory should continue and endure during his absence out of the realme, and ay and while he return, and that the same be then discharged by writ. Some six or seven years thereafter, the said Mr William writes a letter to his father, whereby he wills him to take what course he thinks fitting for reducing of the said factory, and annulling thereof; whereupon there is reduction intended. It was *alleged*, The factory could not be reduced, in respect of the conception thereof, and that the factor had expended considerable sums of money for the behoof of the constituent. THE LORDS, notwithstanding of the clause contained in the factory, reduced the same, as being inconsistent with the nature of a factory, which behoved to be revocable at the pleasure of the constituent; and also found that he ought to count and reckon for his intromissions; but that he was not denuded himself of the factory till he should be satisfied of all counts and sums of money debursed by him for the behoof of the constituent, and for that effect appointed count and reckoning.

*Newbyth, MS. p. 67.*