

1676. July 14.

The VISCOUNT of OXFORD, and his CURATORS, *against* The LADY CHAPPELL.

No 52.

A factor is not bound to poid tenants, if they have sufficient goods, and corn to sow and labour.

THE VISCOUNT of Oxford and his Curators having pursued the Lady Chappell, as executrix to her deceased husband, who was chamberlain, for making payment for what was resting of the full years duty of the estate during his factory; it was *alleged*, That she ought to have defalcation of many rests given up in an account due by the tenants, which the Curators were acquainted with, and gave no order to distress them; likeas the forbearance of the tenants was necessary and profitable for the Viscount, seeing they were impoverished, and if the ground had been poided, the lands would have been cast waste, which would have been greater loss than to forbear. It was *replied*, that the tenants being resting a whole year's duty, it was far better to have poided them, than to have suffered the rests to run on to a whole year's duty; likeas the Curators did ordain diligence to be done long before it amounted to so much. THE LORDS did find, that a factor, or chamberlain, was not liable for poiding the tenants, if he can prove that they had more stock than would sow and entertain their goods and families for labouring, and that by poiding the ground would have been casten waste.

Fol. Dic. v. 1. p. 243. Gosford, MS. No 880. p. 562.

No 53.

1680. January 7. M'BRIDE *against* MELVILLE.

A FACTOR is liable to do diligence, if the factory contain a salary, though not containing any clause obliging him to do diligence.

Fol. Dic. v. 1. p. 242. Stair.

*** See this case, No 15. p. 2561.

1683. March.

SUTHERLAND *against* ROSS.

No 54.

FOUND that a factor and administrator for uplifting minors' money, named and appointed by the minor's father, was not obliged to intromit with all the estate, and was not liable for annualrent of money uplifted by him, unless it had borne annualrent, or that he had got annualrent for it, and so was *lucratus*, in respect the factory did not oblige him to employ, or to do diligence, nor contained a salary, which imports diligence.

Fol. Dic. v. 1. p. 242. Harcarse, (MINORITY.) No 705. p. 199.