

(DUE BY FACTORS.)

firmed, and who had also accepted a factory from the said Elizabeth's tutor, the said Hume being deceased, and also the pursuer's husband; she now pursues the relict of the said factor, as intromittatrix and executrix to her husband, who before was decerned, and his heirs, to make payment of the annualrents and profits of the sums decerned, of all years and terms continually since the said factor's intromission, and in time to come, while the payment be made:—Wherein the LORDS found, That neither the relict of the said factor, nor his heirs, were subject in law to pay the said profit, the sums being intromitted with by the said factor, by the space of thirty years since, or thereby, albeit decret was recovered in *anno* 1620, or thereby, against the factor for the principal sums; but found, That her action for the said profits was competent to her against her own tutor, and not against the heir or executor of the factor.

Act. ———.

Alt. Craig.

Clerk, Gibson.

Fol. Dic. v. 1. p. 40. Durie, p. 561.

No 51.
principal sums
for which he
had been
liable.

* * By act of Sederunt, 31st July 1690, it is declared, That where there is a sequestration of rents, and a factor named by the Lords, that the factor shall be liable for annualrent of what rents he shall recover, or by diligence might have recovered, within a year after the same are due, in respect the factor cannot safely pay to any of the competitors until the preference be concluded; and in like manner, that no aliment shall be granted to debtors or persons having right to a reversion or to the property after the distresses are purged, unless it be evident that there is a superplus rent over and above all the annualrents of the person's competing.

Act of Sederunt 1690,
respecting
judicial factors.

Acts of Sed. p. 186.

1701.

CREDITORS OF GARDEN *against* ROBERTSON.

IN a process at the instance of creditors on a bankrupt estate, against the factor, wherein they craved, That he might be liable for annualrent, within a year after the rents fell due, in the terms of the act of sederunt, ult. July 1690.—THE LORDS found the factor liable in annualrent, conform to the said act, and so confirmed it by a decision; and this though the fortune was small; and the creditors usually applied for warrants upon the factor for their annualrents, which he could not quickly answer, unless he were allowed to keep money in his hands.

Fol. Dic. v. 1. p. 40. Fountainhall, MS.

No 52.
A factor found
liable for annualrent
from a year after
the rents fell
due.