

four years free rent, or a fourth or fifth of the value of the estate, or a lesser proportion, and for that effect ordained a condescendence to be given in, what may be a reasonable provision either for wives or younger children.

No 145.

Fol. Dic. v. 1. p. 499. Fountainball, v. 2. p. 60.

1701. June 19.

WRIGHT, Petitioner.

MR ROBERT WRIGHT, factor to the estate of Bruce of Kennet, gave in a bill, representing, that, by the tenants' late delivery of their farm bear, the prices were fallen, so that he could not win to the Sheriff of Clackmannan's fiar (within which shire the lands lay), which was L. 8 Scots, and therefore craved the Lords' warrant to sell it at the best avail, as the markets now rule. This was to get it allowed when he came to fit his accompts; but the Lords thought it not regular to give him any directions in the matter, but left him to his own method; and this course they also take in setting of lands, as in the case of Meik of Leidcassy, who, by bill, shewed that he had 15 bolls of bear, 3 bolls of oats, some turses of straw and capons, as a feu-duty payable to him yearly out of the kirk-lands of Coupar's Grange; and that Souter and Crockat, the heritors, being either dead or bankrupt, the lands had lien lea these two years bygone, none offering to meddle with them; and seeing not only he, but the minister's stipend, and King's cess, and other creditors, were all disappointed by this course, therefore he craved a factor might be put in to set or labour the lands, that their debts might not perish; the Lords considered, if they had not adjudged already, they might do it, and then, by their own right and authority, they might put in a factor; and therefore refused the bill. Likeas, when factors cannot get lands set to the full avail to what it paid formerly, the Lords refuse to interpose their authority, because it is frequently sought with no other design but to give down the rental, that at the roup it may be sold at an unworth to the prejudice of the posterior creditors; and so they are left to act in these things as rational provident men would do, as they will be answerable on their peril.

No 146.

A factor on a burdened estate asked advice of the Court relative to his management. Refused.

Fol. Dic. v. 1. p. 499. Fountainhall, v. 2. p. 114.

1705. January 6.

LESLIE, Petitioner.

LESLIE of Balnageith, as assignee by Leslie of Middleton, having right to a bond of 6000 merks due by Sir Patrick Ogilvie of Boyne; and my Lord Seafield having got the gift of his escheat and recognition, Balnageith adjudges for this debt; but when he comes to extract his decret, he finds no penalty liquidated in his bond, but only the general clause 'with annualrent and penalty,' without specifying what the penalty should be; whereupon he supplicates the

No 147.

No 147. Lords, representing this has been but an omission of the writer, and that the Lords commonly sustain the fifth or sixth part of the principal sum to be the conventional penalty and liquidate expenses; and therefore craved the Lords would allow the extractor to insert that sum in his adjudication, otherwise he would be a considerable loser, being in all probability to lie long out of his money. THE LORDS thought the writer of the bond culpable and censurable for so gross an omission; but did not find they had power to supply his defect, and therefore refused the bill.

Fol. Dic. v. 1. p. 498. Fountainhall, v. 2. p. 256.

1711. June 21.

ALEXANDER CALDER Younger of Asswanly, *against* ELIZABETH MIDDLETON,
Daughter to Andrew Middleton of Balbegno.

No 148.

The principal sum in a bond being payable with annualrent at such terms after the granter's decease, as certain trustees therein mentioned should appoint; and both the granter and these trustees having died without determining the manner and terms of payment; the Lords decerned for principal and annualrent from the date of the decree.

ANDREW MIDDLETON of Balbegno, and Robert Middleton his eldest son, granted a bond of provision to Charles and Andrew Middletons his younger sons, wherein they obliged themselves to pay to Charles 5000 merks, and to Andrew 4000 merks, with annualrent thereof at such terms after the father's decease as Colonel Middleton and others therein mentioned, or any two or three of them should appoint. After the persons in whom this faculty was lodged, and the granters of the bond, were all dead, without determining the manner and terms of payment, Alexander Calder, assignee to the bond, having pursued Elizabeth Middleton as heir to the said Andrew Middleton elder, her father, to pay the money, the LORDS, upon her renunciation to be heir, decerned *cognitionis causa* for payment of the principal sum and annualrent thereof from this day.

Fol. Dic. v. 1. p. 498. Forbes, p. 509.

* * * Fountainhall reports this case :

ANDREW MIDDLETON of Balbegno grants bond to Charles and Andrew Middletons his sons for 9000 merks betwixt them, but with this quality, that it shall not be payable but at such a term as four friends named by him or any two of them should appoint, it always being after his decease, with power also to determine from what time they shall bear annualrent. Both the father and two sons being deceased, Elisabeth Middleton their sister confirms herself executrix to them, and assigns the foresaid 9000 merks to Calder of Asswanly, who charging her to enter heir, pursues her for payment; and having given in a renunciation, the difficulty arose, that the friends, to whose arbitration the term of payment and commencement of the annualrents was remitted, were dead without giving any determination; and therefore he on a bill craved that the Lords,