

No 13. to great charges in rectifying the mistakes in his accounts, had no title to any salary; or if he had, their damage and interest did compensate the same. Besides, that the allowing him a salary, would encourage factors to endeavour to wrong their constituents.

Fol. Dic. v. 1. p. 288. Forbes, p. 510.

No 14. 1712. July 1. DUTCHESS of BUCCLEUGH *against* NAIRNE.

A FACTOR who had no written factory was found entitled to a salary, though none was pactioned.

Fol. Dic. v. 1. p. 288. Fountainball.

* * * See This case, No 7. p. 4051.

1715.

No 15. The CHILDREN of Baillie SMITH *against* The Earl of WINTON.

Found as above.

IN this action, as mentioned 1st and 3d December 1714, No 67. p. 526. the LORDS having by their interlocutor of the 18th January 1715.

‘ Found, That the short prescription could take no place, with respect to the salary of the two years not accounted for; did now also repel the prescription, as to what salaries were due preceding the late Earl’s decease. And found that these salaries may be allowed by way of discharge in the accounts to be made preceding the said decease.’

There being also three periods of time condescended on, wherein Baillie Smith did manage, viz. *imo*, From the decease of the late Earl of Winton, in *anno* 1704, till the death of his second son Mr Christopher, (under whom the Baillie did manage) in *anno* 1705, being about ten months. *2do*, From the decease of Mr Christopher, till Baillie Smith obtained a factory from the Lords of Session in *anno* 1706. *3tio*, From the time of the present Earl’s arrival in November 1707, till the Baillie’s death in July 1710.

As to the *first* of these periods, having been proven, that the Baillie assisted Mr Christopher in the management of the estate for the space aforesaid, the LORDS allowed him for his said assistance and service, and for his pains and expenses 200 merks per annum. But, as to the *second* and *third* periods, they found no salary due to the Baillie, and therefore assoilzied the Earl from that part of the libel. See PRESCRIPTION.

Act. Falconer.

Alt. Horn.

Clerk, Gibson.

Fol. Dic. v. 1. p. 288. Bruce, No 60. p. 74.