

found that action here must stop for such time as Sir Archibald may sue her in England, and for that they allowed two years, and in this last I did not vote, because I doubted, if she was not bound to count here, whether we could have any regard to the defence?—10th July 1754, On a reclaiming bill for Sir Archibald, and answers, which were remitted to the Ordinary and reported, we altered the first part of the above interlocutor, and found the compensation competent, but adhered to all the rest.

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FACTOR.

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No. 1. 1734, July 4. WILLIAM CUNNINGHAM, *Supplicant*.

THE Lords remitted to the Ordinary on the bills, with power to grant the factory for the annualrents but not the principal sum.

No. 2. 1736, Nov. 30. EDGAR, Factor of Clouden, *against* CREDITORS.

THE Lords adhered to the interlocutor 31st July, finding that Edgar the factor ought to be charged with the annualrent of the money he received from former factors whether principal sums or annualrents from a year after the said payments were made; but remitted to the Ordinary to hear him on the allegiance that money was not paid him but only bonds assigned, which were not paid till 1721.

No. 3. 1737, Dec. 16. CREDITORS of ANDERSON *against* HANDYSIDE.

THE Lords found that this general factory which did not contain even a power to compound and transact, did not empower the factor to accept of this trust-disposition. They also, at least several of us, thought that if he was bound by his factor's acceding, that other creditors not acceding but reducing, would not have liberate him, though some of us seemed to doubt, but we found no occasion to give any interlocutor thereon.

No. 5. 1738, June 16. PRINGLE and PORTEOUS *against* KENNEDY.

THE Lords adhered to the Ordinary's interlocutor, whereof I doubted greatly in point of law, because the law seems to make no distinction between foreigners and natives as to their agents or factors being liable for them; 2dly, The practice of making foreigners find caution *de expensis* both in the Admiralty-Court and even here, supposes that the factor here is not liable. Kilkerran took it on the footing as if Pringle were in effect assignee though not *in rem suam*. But I doubted that an assignee suing *bona fide* on a bond whereof payment had been made to his cedent would be liable in expenses, and the interlocutor did not put it on that footing, nor did the rest of the Lords; and yet they seemed to agree, that one acting as an ordinary agent, if it were not upon a factory, would not be liable, which I did not well comprehend.